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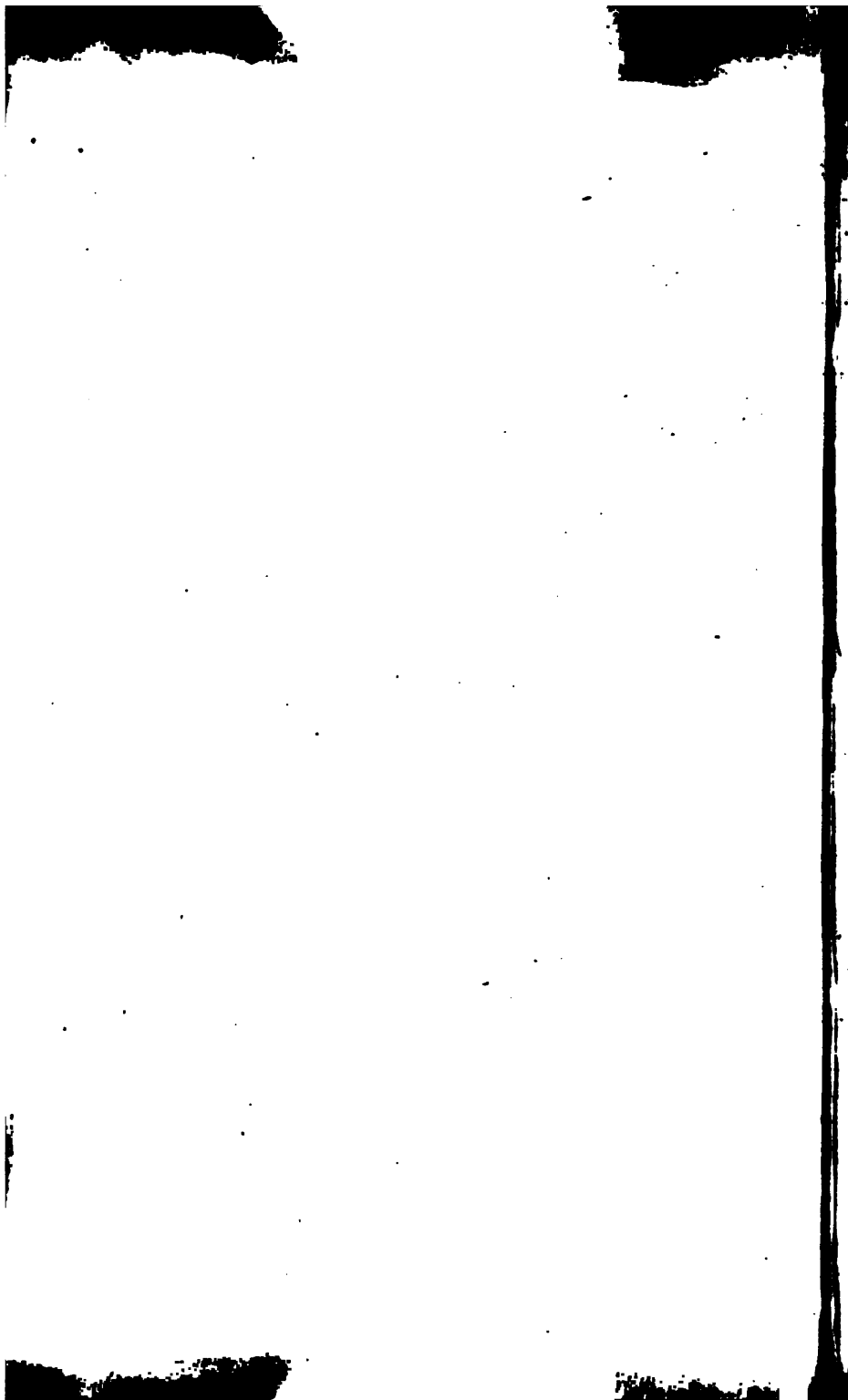
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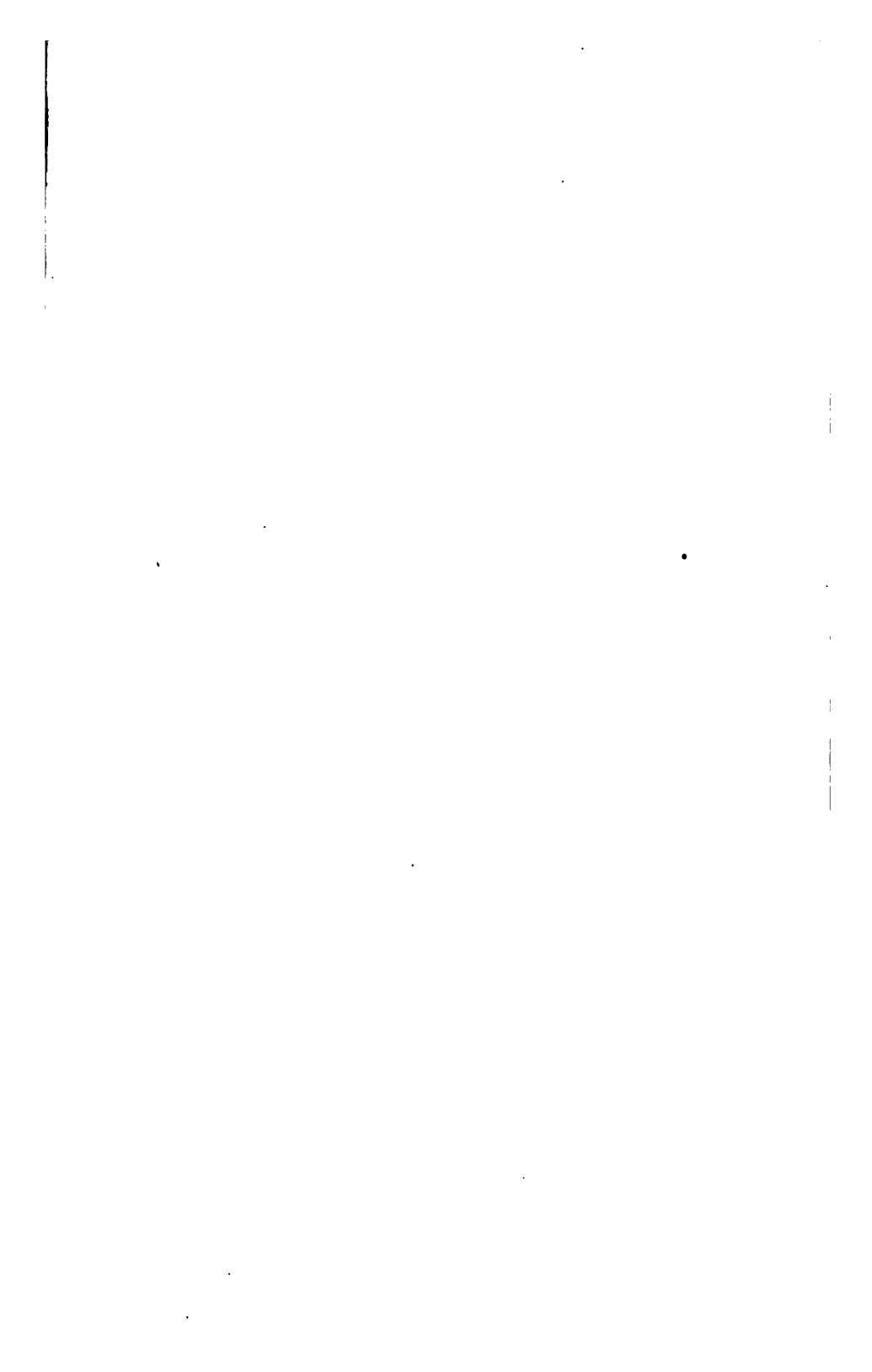
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CASES AT LARGE CONCERNING TITHES;

CONTAINING

All the RESOLUTIONS of the respective COURTS of EQUITY, particularly those of the EXCHEQUER, taken from the printed REPORTS, and MANUSCRIPT COLLECTIONS, mostly by Sir SAMUEL DODD, late Lord CHIEF BARON, never before published;

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By JOHN RAYNER, of the INNER TEMPLE.

IN THREE VOLUMES.

VOLUME III.

"Non meâ quidem fide, sed diligentiaâ Johanneâ."

Sir HEN. SPELMAN.

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AN APPENDIX

To the CASE of the APPELLANTS,

*Being the written Evidence of the said Appellants,
read on the first Hearing of the Cause in the Court
of Exchequer.*

A Copy from the original grant in the chapel of the rolls, dated 5 August, 33 Hen. VIII. whereby the King granted to the dean and chapter of *Chester*, (whom he had created with perpetual succession) to hold to them, and their successors for ever, among divers other manors, lands, tenements, rectories, advowsons, &c. therein declared to be part of the possessions of the late dissolved abbey of *Chester*, the manor and rectory of *Sutton* in *Wirball*, and all messuages, lands, tenements, tithes, and hereditaments, in the townships of *Much Sutton* and *Little Sutton*, and all messuages, lands, tenements, glebe lands, granges, commons, tithes, and other profits, possessions, and hereditaments, in the townships and parishes of *Sutton*, in *Wirball*, *Eastham*, *Thornton*, *Hooton*, *Overpool*, *Netherpool*, *Great and Little Sutton*, &c. to the rectories, granges, or churches therein mentioned, belonging or appertaining; and also the advowson of the vicarage of *Eastham*, and therein declaring the rectories should be held appropriate.

A copy from the original letters patent in the rolls chapel, dated 14 May, 7 Edward VI. whereby the King licensed and empowered the said dean and chapter, by deed of scottment or otherwise,

to alienate and grant to Sir *Richard Cotton*, Knt. then comptroller of the household, among other estates so granted to him by King *Henry VIII.* the manor of *Sutton* in *Wirball*, and all tenements and hereditaments parcel thereof; and all lands, tenements, and hereditaments, in *Much Sutton* and *Little Sutton*, and the rectory of *Sutton* in *Wirball*, to hold to the said Sir *Richard Cotton*, and his heirs, in fee, on paying to the said dean and chapter the yearly *fee-farm* rent of six hundred and three pounds, eighteen shillings, and ten-pence.

An indenture of bargain and sale inrolled, dated 2 November, 7 Elizabeth, whereby *George Cotton*, Esq; the son and heir of the said Sir *Richard Cotton*, granted, bargained, and sold unto Sir *Hugh Cholmondeley*, Knt. and *Thomas Brown*, and their heirs, in fee (amongst other estates, parts of those alienated by the said dean and chapter to the said Sir *Richard Cotton*) the manor of *Sutton* in *Wirball*, and all messuages, with the rights, members, and appurtenances, and cottages, dove-houses, mills, lands, tenements, rents, rectories, tithes, advowsons, commons, and hereditaments, in *Sutton* and *Wirball*, *Ince*, and *Bromberow*, and the advowsons of the churches there, and all portions, tithes, obventions, oblations, and other hereditaments to the said rectories belonging; and all and all manner of tithes in *Sutton* and *Wirball*, *Much Sutton*, *Little Sutton*, *Eastham*, *Plymyard*, *Overpool*, *Netherpool*, *Heaton*, *Thorn-ton*, and *Whitby*, which the said dean and chapter by their deed indented, bearing date 15 May, 7 Edward VI. did convey and assure unto Sir *Richard Cotton*, father of the said *George*, and to his heirs, paying to the said *George Cotton*, and his heirs for ever, the yearly rent of one hundred and one pounds, and thirty

thirty-seven pounds, with a covenant from him to indemnify the premises against the said gross yearly fee-farm rent of six hundred and three pounds, reserved to the said dean and chapter, on their alienation to Sir *Richard Cotton*, and to produce all deeds and evidences as his grantees should require.

An indenture, dated 29 September, 1694, whereby *Thomas Cholmondeley*, Esq; demised in mortgage, for sixty-five years, to Dame *Isabella Chicheley* (*inter alia*) all those tithes of corn, hay, grafs, and all other his tithes and tenths whatsoever, yearly arising out of the manor of *Great and Little Sutton*, and out of any of the closes, lands, hereditaments, and premises in *Great and Little Sutton* aforesaid, with their and every of their appurtenances, for securing six hundred pounds, and interest.

An indenture of assignment of the same mortgage, dated November 20, 1705, from the said Dame *Isabella* to *Francis Cholmondeley*, Esq.

An indenture of assignment of the same mortgage, dated October 4, 1709, from *John Parker*, Esq; (reciting therein a declaration of trust, and an assignment to the said *John Parker*, from the said *Francis Cholmondeley*) to *John Hunt*, Esq.

An indenture of assignment of the same mortgage, dated January 23, 1716, from the executors of the said *John Hunt* to the reverend *William Astlen*, and a confirmation thereof, and a further mortgage of other premises from *Charles Cholmondeley*, Esq; son and heir of the said *Thomas Cholmondeley*, Esq; deceased, for securing three thousand one hundred and fifty pounds, and interest.

An indenture of surrender of the said mortgaged premises, dated *May 23, 1724*, from said *William Ashton* to *Thomas Cholmondeley, Esq;* to merge the term in the inheritance.

Indentures of lease and release, dated *February 21 and 22, 1708*, being a mortgage in fee from *Charles Cholmondeley*, to *John and William Knight*, of *Sutton Hall* and demesne, and the tithes of corn, grain, and hay, within the township of *Little Sutton*, for securing one thousand five hundred pounds, and interest.

Indenture of assignment of the same mortgage, dated *May 1 and 2, 1721*, to *Gideon Harvey and John Fydy*, for securing the same sum of one thousand five hundred pounds, and interest.

Indenture of assignment of the same mortgage, dated *May 15 and 16, 1724*, to attend the uses limited of the same mortgaged premises, in the settlement made by the said *Charles Cholmondeley*, dated *May 20, 1723*.

A copy of the act of parliament, for sale of part of the real estates of the said *Charles Cholmondeley*, passed in the sixth year of the reign of his late Majesty King *George II.* whereby

6 Geo. II, chap.

All the messuages, tenements and lands of the said *Charles Cholmondeley*, then in the several leases for lives, lying in the townships of *Great Sutton* and *Little Sutton*, (and which leasehold tenures then included the whole of those townships, except the hall and demesne lands, and one cottage) and the rectory of *Sutton*, and all tithes thereto belonging, except the tithes in *Little Sutton*, were thereby vested in trustees to be sold. And by the same act,

The

The hall and demefne of *Sutton*, with the said tithes of *Little Sutton*, were particularly charged with the perpetual payment of the yearly fee-farm rents, reserved to *Cotton*, on his alienation to *Cholmondeley*, in the 7 *Elizabeth*.

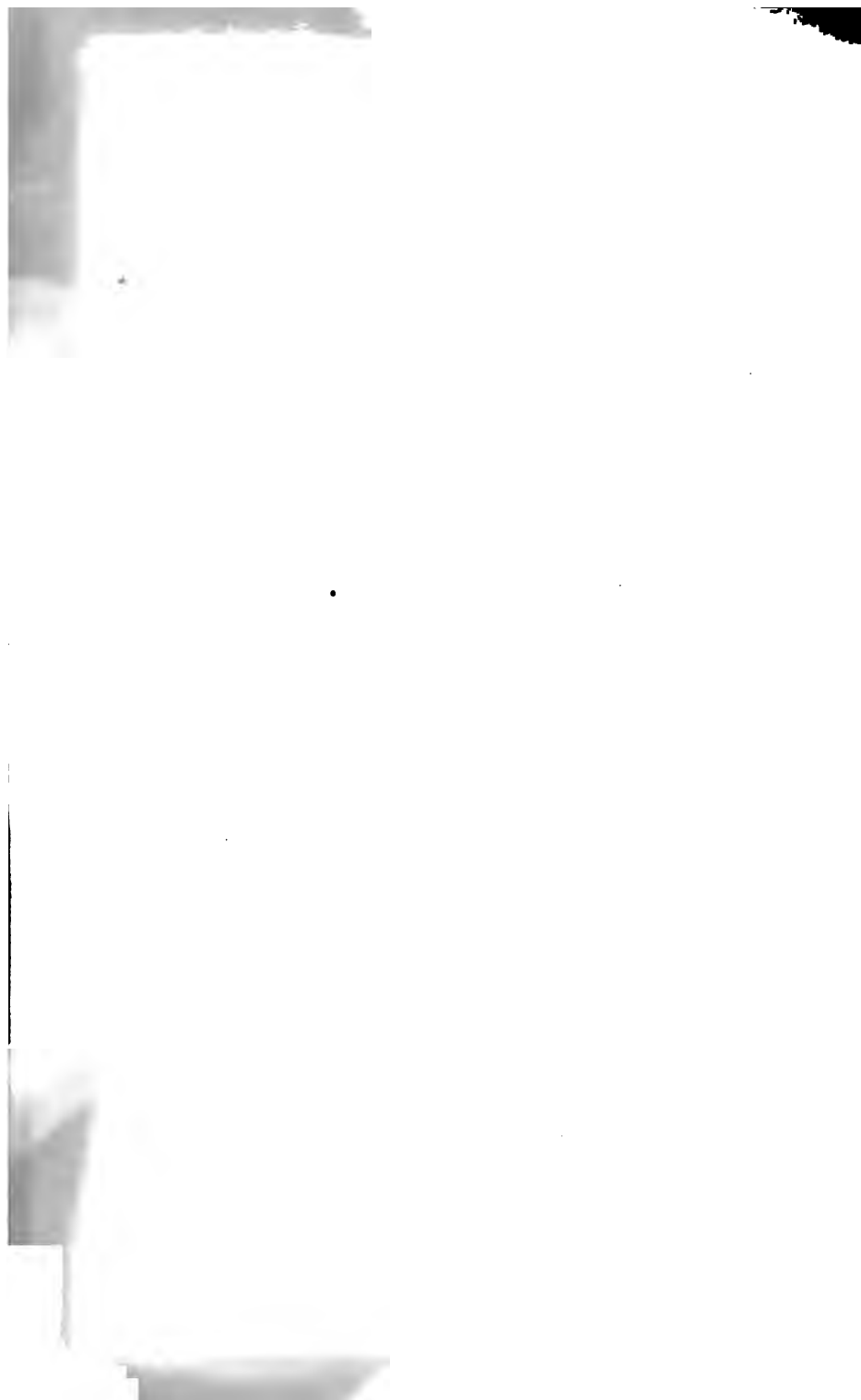
The Appellant's oral Evidence on the first Hearing.

THOMAS ROBINSON, aged sixty-two,

To the fifth interrogatory saith, He does not believe, or ever heard the respondent, or his predecessors, or any person for his or their use, ever took any tithe in kind, for any corn or grain growing on, or hay made from grass growing on any of the lands occupied by defendants, *Whithead*, *Davies*, and *Bateman*; but saith, the tithe of corn and grain throughout the township of *Great Sutton*, did, in his first knowledge of said township, belong to, and was taken by the said *Charles Cholmondeley*, and continued to be taken by him, or his lessees, till he sold same to Mr. *John Wilkinfon*, in whose family it has continued, as deponent verily believes.

Saith, The tithe of corn and grain throughout the whole township of *Little Sutton*, in deponent's first remembrance, did belong to, and was taken by said *Charles Cholmondeley*, or his lessees, and since his death hath been taken by *Thomas Cholmondeley*, or his lessees.

Saith, he never knew or heard of any tithe hay being taken by any person in the townships of *Great Sutton* and *Little Sutton*, but has always heard, that all those lands were exempted from payment of tithe hay.





ham, except said halls and demesnes, which deponent does not know whether they yielded or not the following *modus* or compositions for small tithes, *viz.* a married man, four-pence ; a wife, two-pence ; a servant man, three-pence ; a servant woman, two-pence ; bees, two-pence ; colt, four-pence ; farrow cows, one penny ; calving cow, one penny half-penny ; smoak, one penny ; garden, one penny ; hen, one penny ; tilt, one penny.

Hath heard the inhabitants of *Overpool* pay six-pence as a *modus* for a calving cow, which is the only variation deponent knows of in the uniform payments of vicarial dues, and other titheable matters belonging to the vicar throughout the said parish, (except that some of the townships pay him tithe hay in kind, and except such exemptions as may be claimed in respect of said halls and demesne).

The further Evidence read on the Part of the Appellants, on the Rebearing of the Cause, out of the Respondent's Depositions.

WILLIAM CURREY,

To the fourth, fifth, and nineteenth interrogatories, That he well remembered, upon the death of Mr. *Griffith*, the last vicar but one before the respondent, his the deponent's father, with *Thomas Whitehead*, were the church-wardens of the said parish ; and soon after Mr. *Griffith*'s death, who died a short time before *Easter*, 1728, a table intituled, " a table of the tithes due in the parish of *Eastham*, as they had been formerly received by *William Seddon* and *George Beckett*,

Beckett, vicars of *Eastham*," was sent from the office of ordinary of the diocese of *Chester*, as he had heard his late father, deceased, say; by which table, among other particulars, such respective *modus*s as the witness had before set forth, for *Pool Hall* and *Hooten Hall*, appear set down. Saith, that on *Easter Monday*, 1728, his father went out of office as church-warden, and that *John Jones*, the father of deponent's wife, was elected church-warden in his stead, and afterwards collected, during the vacancy of the vicarage, the vicar's tithes and dues by such table, as his guide; and such table being, by wearing thereof in collecting from place to place, torn and worn out, a copy was made thereof by *Thomas Walker*, the parish clerk, who afterwards died, and with whose hand-writing he was well acquainted, and believed that the said table so sent from said office, being so worn out and thrown aside, was lost; and as a reason why he said the vicar's tithes and dues were collected during the said vacancy by such copy, was, that the same was kept in the church chest, and *Mr. Griffith*, in his life-time, having frequently taken two-pence for four cows that had calved, instead of one penny for each cow and calf, under the number of five cows and calves, such copy was put into and kept locked up in the church chest for preservation. And when *Mr. Lebeg*, the last vicar of *Eastham*, came to be vicar, recourse was had to such copy, to shew and ascertain to him what were the ancient payments for cows and calves, and that *Mr. Lebeg*, all the time he continued vicar, from 1728 to 1767, always collected from him, the witness, who was a parishioner, and, as he believes,

lieves, from the other parishioners, his dues for cows and calves, agreeable to such copy. That the exhibit marked (L.) was the copy so made of the table so sent from the office of the ordinary, and that he received it out of the church chest, where the same was usually kept locked up; that the church-wardens were usually elected on *Easter Monday*, one being named by the vicar, and the other by the parishioners; that there is a chest, called the church chest, kept in the chancel of the said church, which is divided into two parts; on one part there are two locks and two keys, one of which keys is kept by the vicar, and the other by the church-wardens, or one of them, and the key of one lock will not unlock the other; and in that part of the chest which hath two locks, the books and papers relating to the business and concerns of the parish were kept, and particularly the said exhibit (L).

ELLEN, the wife of said *William Currey*,

To interrogatory nineteenth, saith, That on the death of Mr. *Griffith*, the last vicar but one, who died the week before *Easter*, between forty and fifty years ago, her father-in-law, *Samuel Currey*, was church-warden, and, on the *Easter Monday* in that year, her own father, *John Jones*, was chosen one of the church-wardens; and says she heard said *Samuel Curry* (who had been long dead) say, that soon after that time, a writing came out of the office of the ordinary of the diocese of *Chesster*, as a table to guide in collecting of fees and dues belonging to the vicarage, and that he the said *Samuel Currey* had paid six-pence for the same; and the witness says she had seen such six-pence

pence charged in his accounts in the parish books, as church-warden, and that she was the rather induced to believe the same, because on her own father, *John Jones*, who was also long dead, coming into said office, that writing came into his hands, and he ordered her the witness, to copy the same, which she did, in a book, and *Thomas Walker*, then clerk of the said parish, made another copy, to be kept in the church chest, that which she copied being for her father to collect the vicarial fees and dues by. That the exhibit marked (L) was the copy so made by *Walker*, as she believed, she having often seen him write, and being well acquainted with his hand-writing; that she believes said copy, ever since it had been so made, had been usually kept in said chest; and the reason it was there so kept, was to ascertain the knowledge of the vicarial fees and dues of said parish therein contained, for the future, because *Mr. Griffith* had in his life-time taken six-pence for every cow and calf in the township of *Eastham*, and, as she had heard and believed, through the rest of the townships of the said parish, instead of one penny, as set down in the said exhibit; and she also says, that the vicarial fees and dues had ever since (as she had heard her husband, and many parishioners of said parish say, and as she believed) been collected by and agreeable to said exhibit.

JOSEPH CRITCHLEY,

To interrogatory nineteenth said, That the exhibit (L) intituled at the top, "A table of the tithes due in the parish of *Eastham*, as they have been formerly received by *William Seddon* and
George

to alienate and grant to Sir *Richard Cotton*, Knt. then comptroller of the household, among other estates so granted to him by King *Henry VIII.* the manor of *Sutton* in *Wirball*, and all tenements and hereditaments parcel thereof; and all lands, tenements, and hereditaments, in *Much Sutton* and *Little Sutton*, and the rectory of *Sutton* in *Wirball*, to hold to the said Sir *Richard Cotton*, and his heirs, in fee, on paying to the said dean and chapter the yearly *fee-farm* rent of six hundred and three pounds, eighteen shillings, and ten-pence.

An indenture of bargain and sale inrolled, dated 2 November, 7 Elizabeth, whereby *George Cotton*, Esq; the son and heir of the said Sir *Richard Cotton*, granted, bargained, and sold unto Sir *Hugh Cholmondeley*, Knt. and *Thomas Brown*, and their heirs, in fee (amongst other estates, parts of those alienated by the said dean and chapter to the said Sir *Richard Cotton*) the manor of *Sutton* in *Wirball*, and all messuages, with the rights, members, and appurtenances, and cottages, dove-houses, mills, lands, tenements, rents, rectories, tithes, advowsons, commons, and hereditaments, in *Sutton* and *Wirball*, *Juce*, and *Bromborow*, and the advowsons of the churches there, and all portions, tithes, obventions, oblations, and other hereditaments to the said rectories belonging; and all and all manner of tithes in *Sutton* and *Wirball*, *Much Sutton*, *Little Sutton*, *Eastham*, *Plymyard*, *Overpool*, *Netherpool*, *Hooten*, *Thorn-ton*, and *Whitby*, which the said dean and chapter by their deed indented, bearing date 15 May, 7 Edward VI. did convey and assure unto Sir *Richard Cotton*, father of the said *George*, and to his heirs, paying to the said *George Cotton*, and his heirs for ever, the yearly rent of one hundred and one pounds, and thirty

thirty-seven pounds, with a covenant from him to indemnify the premises against the said gross yearly fee-farm rent of six hundred and three pounds, reserved to the said dean and chapter, on their alienation to Sir *Richard Cottan*, and to produce all deeds and evidences as his grantees should require.

An indenture, dated 29 September, 1694, whereby *Thomas Cholmondeley*, Esq; demised in mortgage, for sixty-five years, to Dame *Isabella Chicheley* (*inter alia*) all those tithes of corn, hay, grass, and all other his tithes and tenths whatsoever, yearly arising out of the manor of *Great and Little Sutton*, and out of any of the closes, lands, hereditaments, and premises in *Great and Little Sutton* aforesaid, with their and every of their appurtenances, for securing six hundred pounds, and interest.

An indenture of assignment of the same mortgage, dated November 20, 1705, from the said Dame *Isabella* to *Francis Cholmondeley*, Esq.

An indenture of assignment of the same mortgage, dated October 4, 1709, from *John Parker*, Esq; (reciting therein a declaration of trust, and an assignment to the said *John Parker*, from the said *Francis Cholmondeley*) to *John Hunt*, Esq.

An indenture of assignment of the same mortgage, dated January 23, 1716, from the executors of the said *John Hunt* to the reverend *William Astor*, and a confirmation thereof, and a further mortgage of other premises from *Charles Cholmondeley*, Esq; son and heir of the said *Thomas Cholmondeley*, Esq; deceased, for securing three thousand one hundred and fifty pounds, and interest.

An indenture of surrender of the said mortgaged premises, dated *May 23, 1724*, from said *William Ashton* to *Thomas Cholmondeley, Esq;* to merge the term in the inheritance.

Indentures of lease and release, dated *February 21 and 22, 1708*, being a mortgage in fee from *Charles Cholmondeley*, to *John and William Knight*, of *Sutton Hall* and demesne, and the tithes of corn, grain, and hay, within the township of *Little Sutton*, for securing one thousand five hundred pounds, and interest.

Indenture of assignment of the same mortgage, dated *May 1 and 2, 1721*, to *Gideon Harvey* and *John Tydy*, for securing the same sum of one thousand five hundred pounds, and interest.

Indenture of assignment of the same mortgage, dated *May 15 and 16, 1724*, to attend the uses limited of the same mortgaged premises, in the settlement made by the said *Charles Cholmondeley*, dated *May 20, 1723*.

A copy of the act of parliament, for sale of part of the real estates of the said *Charles Cholmondeley*, passed in the sixth year of the reign of his late Majesty King *George II.* whereby

6 Geo. II, chap.

All the messuages, tenements and lands of the said *Charles Cholmondeley*, then in the several leases for lives, lying in the townships of *Great Sutton* and *Little Sutton*, (and which leasehold tenures then included the whole of those townships, except the hall and demesne lands, and one cottage) and the rectory of *Sutton*, and all tithes thereto belonging, except the tithes in *Little Sutton*, were thereby vested in trustees to be sold. And by the same act,

The

The hall and demefne of *Sutton*, with the said tithes of *Little Sutton*, were particularly charged with the perpetual payment of the yearly fee-farm rents, reserved to *Cotton*, on his alienation to *Cholmondeley*, in the 7 *Elizabeth*.

The Appellant's oral Evidence on the first Hearing.

THOMAS ROBINSON, aged sixty-two,

To the fifth interrogatory saith, He does not believe, or ever heard the respondent, or his predecessors, or any person for his or their use, ever took any tithe in kind, for any corn or grain growing on, or hay made from grass growing on any of the lands occupied by defendants, *Whitehead*, *Davies*, and *Bateman*; but saith, the tithe of corn and grain throughout the township of *Great Sutton*, did, in his first knowledge of said township, belong to, and was taken by the said *Charles Cholmondeley*, and continued to be taken by him, or his lessees, till he sold same to Mr. *John Wilkinfon*, in whose family it has continued, as deponent verily believes.

Saith, The tithe of corn and grain throughout the whole township of *Little Sutton*, in deponent's first remembrance, did belong to, and was taken by said *Charles Cholmondeley*, or his lessees, and since his death hath been taken by *Thomas Cholmondeley*, or his lessees.

Saith, he never knew or heard of any tithe hay being taken by any person in the townships of *Great Sutton* and *Little Sutton*, but has always heard, that all those lands were exempted from payment of tithe hay.

Hilary Term, 19 Geo. II.

An indenture of surrender of the said mortgaged premises, dated *May 23, 1724*, from said *William Ashton* to *Thomas Cholmondeley, Esq;* to merge the term in the inheritance.

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The Appellant's oral Evidence on the first Hearing.

THOMAS ROBINSON, aged sixty-two,

To the fifth interrogatory saith, He does not believe, or ever heard the respondent, or his predecessors, or any person for his or their use, ever took any tithe in kind, for any corn or grain growing on, or hay made from grass growing on any of the lands occupied by defendants, *Whitehead, Davies, and Boteman*; but saith, the tithe of corn and grain throughout the township of *Great Sutton*, did, in his first knowledge of said township, belong to, and was taken by the said *Charles Cholmondeley*, and continued to be taken by him, or his lessees, till he sold same to *Mr. John Wilkinfon*, in whose family it has continued, as deponent verily believes.

Saith, The tithe of corn and grain throughout the whole township of *Little Sutton*, in deponent's first remembrance, did belong to, and was taken by said *Charles Cholmondeley*, or his lessees, and since his death hath been taken by *Thomas Cholmondeley*, or his lessees.

Saith, he never knew or heard of any tithe hay being taken by any person in the townships of *Great Sutton* and *Little Sutton*, but has always heard, that all those lands were exempted from payment of tithe hay.

was part of the said *modus* or composition, because he remembers vicars *Griffiths* and *Lebeg* having a horse or cow kept on those demesnes respectively; and because he hath heard his late father (who was seventy years old when he died about eighteen years ago) and other old people of the said parish, now dead, say, that such keeping was a matter of right belonging to the vicar.

Int. 12. Has heard from several old people, now dead, and it has been always talked of as long as deponent can remember, and it has been the general reputation of the parish, that the plaintiff, and his predecessors, have for a long course of years received the annual sum of one penny, commonly called a *tilt penny*, from the several owners or occupiers of each farm house, having lands held therewith, within the townships of *Great* and *Little Sutton*; which *tilt-penny* payment was all along said to be a *modus* or payment in lieu of tithe hay arising upon the lands belonging to such farm houses in *Great Sutton* and *Little Sutton* as aforesaid; but such *tilt-penny* payment (as deponent hath likewise all along heard) did not extend to any cottage or habitation not having lands held therewith, but extended to cover all the lands belonging to each farm house for which the same was paid.

ANNE CROSS, aged 63.

Int. 4. It hath been the constant reputation of the neighbourhood (of the parish of *Eastham*) for all this deponent's remembrance, and in particular instances she speaks of her own knowledge, that the tithes of corn and grain in kind, but

but no other tithes, have been paid to the several impropriate rectors of the said parish.

For all the deponent's remembrance, the vicars have taken in kind the tithes of hay, pig, and goose, throughout *Eastham*; with *Plymyard and Carlett*, *Childer-Thornton*, and *Hooton* (save the demesne lands) and of wool and lamb in *Childer-Thornton*: and have received all small tithes, or some *modus*es or compositions in lieu thereof, through all the parish (as is the general reputation there) and in some parts of *Eastham*, and *Childer-Thornton*, she speaks of her own knowledge, and doth not believe that any other person, besides the vicars of said parish, hath taken any tithes in any part of the parish, save the said impropriate rectors, who have taken or retained the tithes of *corn and grain* as aforesaid.

Hath always heard, and it is the general reputation of the neighbourhood, that the owners or occupiers of the demesnes of *Nether-Poole* and *Hooton* have always paid to the vicars, yearly, forty shilling each, and the keeping of one horse or cow yearly thereon, as a *modus* or composition in lieu of the tithes of hay, and of all small tithes, for the said demesnes: and that for the demesne of *Little Sutton*, there hath been always paid a sum of money between twenty shillings and thirty shillings (the exact amount of which she cannot tell) to the vicars, as a *modus* or composition in lieu of the tithes of hay, and of all small tithes, for the same hall and demesne. And hath always understood, that such depasturing of cattle upon the respective demesnes of *Nether-Poole* and *Hooton*, and such yearly payment of forty shillings, from the

same were co-equal in point of antiquity; and were so spoken of by such persons as she has heard mention the same.

Int. 14. Saith, her late father, *William Whittle*, in 1729, (and as she believes for some years before), and her brother *Thomas Whittle*, for some few years after that time, under some agreement made with the late Mr. *Cholmondeley* (then impropriate rector of *Great and Little Sutton*) rented and collected the tithes of *corn and grain* arising within *Great Sutton*; but during their so holding that part of the impropriate rectory, they did not collect any other species of tithes save *corn and grain*; nor did they, or either of them, claim, or pretend to take any tithe of hay within that township.

THOMAS EDWARDS, aged fifty-six,
Int. 4 and 11. Saith, the tithes of *corn and grain* through the whole of the parish of *Eastham* have usually been collected in kind by some layman, and not by the vicars, during this deponent's remembrance; but that the vicars have received, in kind, the tithes of all hay throughout the townships of *Eastham*, *Hooton* (except the hall and demesne) and of *Over-Poole*.

Saith, that about thirty-one years ago, *Robert Pye*, then tithe gatherer to vicar *Lebeg*, desired this deponent to go with him to *Whitby*, to fetch home some tithe hay collected (as he said) in that township; and deponent, with said *Pye* and others, accordingly got four carts with horses to draw such hay home to said *Lebeg's* yard and buildings, where they stacked the same; but from what lands in *Whitby* he (*Pye*) collected the same, deponent knows not.

RICHARD

RICHARD WALTON, aged fifty-six,

Int. 4. Was born in the township of *Eastham*, and always, during his remembrance, hath known (as he now doth know) that the tithes of *corn and grain* in kind, but no other tithes that this deponent ever heard of, have belonged, and now do belong, to the impropriate rectors of the parish of *Eastham*; and, in particular, to Mr. *Cholmondeley* and his ancestors, did belong the tithes of *corn and grain* of the several townships of *Great and Little Sutton*, until the late Mr. *Cholmondeley* sold (as this deponent hath heard) all the tithes of *corn and grain* of the said township of *Great Sutton* to one Mr. *Wilkinson*, or somebody under whom he claims.

JOSEPH CHRITCHLEY, aged fifty-one,

Saith, That several lay-persons, as long as this deponent's remembrance of the parish of *Eastham* has been (*viz.* about fifteen years), have taken the tithes of *corn and grain* arising within the said parish; and, in particular, the tithe corn of *Whitby* hath been taken by one Miss *Short*, as impropriator of that part of said parish.

Believes the vicarage of *Eastham* is endowed with the tithes of hay in kind in *Hooton* (save the demefne, for which some money, and the privilege of keeping some cattle thereon, have been, as deponent hath heard, yielded to the said vicarage) deponent having collected the tithe hay there in kind; and also with tithe hay in kind in *Eastham*, with *Plymyard and Carlett*, *Childer-Thornton*, and *Over-Pools*, in all which the deponent hath collected the same in kind for the said vicar, save in *Over-Pools*, which he farmed out to the

occupiers there ; but not with any tithes of hay in kind in *Little Sutton, Great Sutton, or Whitby*, a payment, called a *tilt penny*, having, during all the time of deponent's being clerk of the said parish, until 1771, been collected for the vicar by this deponent as his tithe-gatherer.

Hath seen an entry in the papers of the late vicar *Lebeg* (in said *Lebeg's* hand-writing) of the like payment of a tilt penny in the townships of *Great and Little Sutton*, except the demesne, for which a sum of money (as deponent hath heard) hath been yearly paid to said vicar.

Ever since the plaintiff became vicar deponent hath been his tithe gatherer, and believes said vicarage is endowed with (because he hath collected for said vicar) the tithe of agistment through the parish, save the demesnes of *Hooton, Little Sutton, and Nether-Poole*, for which some payments in money, and privilege of keeping cattle, are yielded yearly ; but can form no judgment whether said vicarage is endowed from the time whereof the memory of man is not to the contrary, or for what time.

Doth not know or believe that any persons, besides the said vicars, have ever received any tithes within the said parish, save the tithes of *corn and grain*, which have been received by the several impropriate rectors of the said parish.

Int. 12. Ever since plaintiff became vicar, down to 1771, this deponent, as plaintiff's tithe gatherer, hath received yearly, soon after *Easter*, an annual sum of *one penny*, commonly called a tilt penny, from the several owners or occupiers of each farm house, having lands held therewith, in the townships of *Great Sutton, Whitby,*

Whitby, and *Little Sutton* (save the hall and demesne) but not from any owners or occupiers of any cottage, having only a garden-spot; and among others, particularly, from each of the four defendants, *Whitehead*, *Davis*, *Maddock*, and *Batman*, this deponent received one penny and no more, as the said tilt penny, yearly.

Saith, That if a considerable part of the lands belonging to a farm-house were taken from it and added to another farm, and yet any land besides a garden-spot was left to be occupied with such farm house, still deponent, if such land so left was mowed, collected a tilt-penny for such farm house to which such land so mowed was left; but if it was not mowed, deponent did not collect or demand a tilt penny from the same, because the tilt penny being payable in lieu of tithe hay, deponent did not think such tilt penny payable.

Says, That when deponent first became plaintiff's tithe gatherer, defendant *Whitehead* lived at the house where he now lives, anciently called *Harvey's*, of which house and another, which deponent believes is called *Buttery's*, and another house where one *Margaret Whitehead* lives (the name of which deponent cannot recollect) the said defendant was and is reputed to be the owner; all which houses heretofore, until this defendant purchased the same from *Mr. Cholmondeley*, were farm houses with lands belonging thereto; for the lands of which several houses a tilt penny ought to be paid; but since defendant *Whitehead* became the purchaser thereof, he hath taken away the lands from *Buttery's*, and that where *Margaret Whitehead* lives, and ever since plaintiff became vicar hath occupied

pied such lands, with the house where he now lives; and *Margaret Whitehead*, with the house she lives in, hath no lands, and there is no land held with *Buttery's* save a little garden-spot. And neither defendant *Whitehead*, nor his son-in-law, *Williamson*, who holds *Buttery's* house, nor said *Margaret Whitehead*, ever paid deponent any payment of the said tilt penny for those two houses called *Buttery's*; and that where said *Margaret Whitehead* lives, or either of them, since deponent hath been tithe gatherer as aforesaid, nor to the plaintiff, as deponent verily believes.

Saith, Defendant *Davies* is a farmer in *Great Sutton*, and ever since plaintiff became vicar hath held, as tenant to Mr. *Busbell*, three tenements in *Great Sutton* aforesaid, one where he has all along lived, called *Busbell's*, another, called *Welshman's*, and a third called *Gerrard's* tenement, all of which heretofore were separate farm-houses, having lands thereto respectively belonging, for which the said payment of a tilt penny ought yearly to be made to the said vicar; but ever since plaintiff's becoming vicar, defendant *Davies* hath lived in the house of *Busbell's* tenement, and the house belonging to *Gerrard's* being fallen, or taken down, so that nothing but a back-kitchen remains, the said defendant occupies that back-kitchen with the house belonging to *Busbell's* tenement, and for all that time hath let *Welshman's* house to tenants, but not any lands therewith; and hath ever since plaintiff became vicar occupied along with the house of *Busbell's*, as well all the lands belonging to *Welshman's* and *Gerrard's* tenements, as those belonging to *Busbell's*; but neither he,

nor any owner or occupier of either of the houses or buildings belonging to *Welfman's* or *Gerrard's* tenements, hath or have, in all that time, paid the said payment of a tilt penny for either of the tenements, called *Welfman's* or *Gerrard's*, to the deponent for the plaintiff's use, or, as deponent verily believes, to the said plaintiff himself.

Saith, The said payment of a *tilt penny* hath never extended to cover any tithes, or titheable matters, vicarial dues, offerings, or oblations (as deponent hath always understood, and *hath been told by the defendant Whitehead*) other than such lands as were yearly mowed and made into hay, from payment of the tithe hay thereof in kind, as belonging to such house, for which such payment of a penny, called a tilt penny, was yearly made in those townships of *Great Sutton*, *Little Sutton*, and *Whitby*.

ROBERT HAYES, (of *Hooton*,) aged sixty-five,

Int. 12. Saith, That vicars *Lebeg* and *Griffith* used to meet their parishioners on *Easter-Monday*, yearly, at a publick house, and to receive their *Easter* dues on that day; but when the plaintiff became vicar (about eight years ago) he generally sent the parish clerk round to the houses of the parishioners to collect the same.

Hath often been present in such meetings, and at the payments made to the vicar, by the occupiers of any farm house having lands held therewith, in *Great* and *Little Sutton*; there was one of a penny, commonly called a tilt penny, annually paid.

paid by each of them to the vicar, which payment was made in lieu of the tithes of all hay, yearly arising from the lands anciently belonging to each farm house, in the occupation of each such occupier, but such tilt penny was not paid for any cottage, or habitation, which had not lands belonging thereto.

Hath frequently heard such occupiers, at such *Easter* mettings, and at other times, *boast* of their paying *only a penny* in lieu of tithe of hay to the vicar, when the occupiers of lands in other townships used to yield the tithe of their hay in kind. And hath also heard the occupiers in such townships, where they yielded tithe hay in kind, grumble and complain against the inhabitants of *Great and Little Sutton*, as being privileged by that tilt-penny payment from yielding such tithe hay in kind.

Always understood, that such payment of a tilt penny extended to cover such particular lands as anciently belonged to each ancient farm house, from setting out such tithe hay in kind ; and that within a few years past, all, or most of the lands belonging to some houses in *Great and Little Sutton*, which anciently were farm houses, having lands thereto belonging, have been taken away and added to other farms, the houses having no other lands left thereto besides a garden spot ; and the alteration was so great, that when deponent was church-warden (about eight years ago) he had great difficulty of finding out from whom to collect the church rate, in respect of the lands so taken away, and some of which the deponent could not find out,

but, nor get his rate in respect thereto ; but the occupiers of those lands have since settled what each occupier thereof shall be rated for the future.

WILLIAM MASON, aged sixty-eight,

Intr. 7. Went to live in *Little Sutton*, twenty-one years ago, and lived there ten years, all that time occupying, as tenant to Mr. *Thomas Whittle*, a tenement, called *Richardson's* and *Coulton's*; the lands of which were occupied by defendant *Whitehead* (but whether for one, two, or three years, deponent cannot set forth) and the house by poor people.

Intr. 12. Saith, he, for the several years of his said occupation of *Richardson's* and *Coulton's* tenement, paid to vicar *Lebeg*, a payment of one penny, yearly, called the tilt penny.

Believes the vicars have for many years received the said tilt penny, from the several owners or occupiers of each farm house, having lands thereto belonging, within the townships of *Great* and *Little Sutton*, but not from any cottage, not having lands belonging thereto for mowing ground, and saith, the payment of such tilt penny which deponent made yearly, as aforesaid, was understood by him to be so made in lieu of the tithe of hay gotten on the said tenement.

Saith, When deponent so lived in *Little Sutton*, it was the general reputation there, and in *Great Sutton*, that every farm house having lands thereto

thereto belonging, made the same payment of a penny, yearly, called the tilt penny, to the vicar, in lieu of the tithe of hay gotten upon the lands belonging to each such farm house, but was not reputed to be payable for any cottage.

JOHN JOHNSON, aged sixty,

Int. 6 and 7. Has lived all his life (except three years) in the parish of *Eastham*, and says, That in 1771, the defendant *Whithead*, occupied a tenement, called *Harvey's*, to which he has laid the land of *Hughson's* (or *Buttery's*) and *Powell's* (or *Johnson's*) and left nothing but a garden-spot to *Hughson's*, and no land at all to *Powell's* tenement; and also held in 1771, *Richardson's* tenement, in *Little Sutton*, as tenant to Mr. *Whittle*.

When deponent first knew *Harvey's* tenement, it belonged to one *Harvey*, and defendant *Whithead's* father lived there, and defendant succeeded his father, and, it being a leasehold, purchased the reversion of Mr. *Cholmondeley*, and the lease dropping, hath ever since held the same as his own inheritance.

Says The first he remembers to hold *Hughson's* (or *Buttery's*) tenement was one *Timothy Buttery*, who held the house and some of the lands; but *Daniel Peers* held the greatest part of the lands before defendant *Whithead* purchased the reversion from Mr. *Cholmondeley*.

When deponent first knew *Powell's* (or *Johnson's*) tenement, it was held by deponent's father,
William

William Johnson, and sometime afterwards defendant *Whitehead* purchased the reversion from *Mr. Cholmondeley*, and has ever since held all the lands belonging thereto, but the house is let to tenants.

When deponent first knew *Richardson's* tenement, it was the leasehold of one *Richardson*, since whose death the reversion hath been purchased by *Mr. Whittle*, and defendant *Whitehead* held the same in 1771.

Saith, That the house now in the occupation of the defendant *Davies*, when deponent first knew it, was called *Busbell's*, and is now the inheritance of one *Busbell*, who is likewise owner of two tenements called *Gerrard's* and *Welchman's*, the lands belonging to which had been for many years before (and were in) 1771, laid to *Busbell's* tenement; and the house belonging to *Gerrard's* is turned into a back kitchen, and held with *Busbell's*, and the house belonging to *Welchman's* is now made into three dwellings, which, in 1771, and some time before, were in the occupation of three persons, who held none of the lands belonging to that tenement.

Says, That besides those tenements, the defendant *Davies*, in 1771, and before, held, and now holds, the lands belonging to *Francis's* tenement, the inheritance of *Mr. Robins*; but the house of that tenement, and a garden spot, are in the occupation of said *Robins*.

Int. 8. Says, That about thirty-seven years ago, defendant *Whitehead*, occupied a tenement in

Little

Little Sutton, called *Edmonson's*, along with *Harvey's*, for ten or eleven years.

Int. 9. Says, That when he first knew *Great Sutton*, there were fourteen farm houses (not cottages) having lands occupied therewith, of the inheritance of all which the late *Charles Chabmondsey*, Esq; was owner.

When deponent first knew *Welchman's* tenement, *Thomas Welchman* had a lease of it, and *George Busbell* purchased the reversion in fee thereof; and the successive occupiers of the lands of that tenement, have been *George Busbell*, *Randle Edwards*, *Isaac Pemberton*, *John Grice*, and the defendant *Davis*, who held the same in 1771; and the house hath been for a long time let separate from the lands, is now in three dwellings, and is now, and was in 1771, let to poor persons.

When deponent first knew *Francis's* tenement, *Robert Francis* had a lease of it, and his son purchased the reversion in fee, and *George Robins* is the present owner thereof; but the defendant *Davis*, in 1771, did, and now doth, hold the lands of that tenement with *Busbell's*, *Gerrard's*, and *Welchman's* tenants.

When deponent first knew *Busbell's* tenement, *George Busbell* had a lease of it, and afterwards purchased the reversion in fee, and the successive occupiers thereof were the said *George Busbell*, *John Busbell*, *Randle Edwards*, *Isaac Pemberton*, *John Grice*, and the defendant *Davis*, who now does (and in 1771 did) hold the same with
Gerrard's

Gerrard's, Welchman's, and Francis's, as aforesaid.

When deponent first knew *Gerrard's*, *George Busbell* had a lease of it, and purchased the reversion in fee, and the successive occupiers thereof were the said *George Busbell*, *John Busbell*, *Randle Edwards*, *Isaac Pemberton*, *John Grice*, and the defendant *Daviss*, who now does, and in 1771 did, hold the house of that tenement, as a kitchen or dairy house to the house and lands of *Busbell's*, and to the lands of *Welchman's* and *Francis's*, as aforesaid.

Saith, There are now, and for several years before 1721 were, five fewer farm houses (having lands held therewith) in *Great Sutton*, than there were when deponent first knew that township.

When deponent first knew *Little Sutton*, there were eighteen farm houses, not cottages, having lands held therewith, and there was also another house, called *Briscoe's*, which then was reputed to have been a farm house, but the lands were separated therefrom before deponent's remembrance; of the inheritance of all which the late *Charles Cholmondeley, Esq.* was owner.

When this deponent first knew *Harvey's* tenement, one *Harvey* had a lease thereof, from whom it came to defendant *Whitehead*, who bought the reversion in fee, and is the present owner thereof.

When deponent first knew *Richardson's* tenement, *John Richardson* was lessee thereof, and *Thomas*

Whittle afterwards purchased the reversion in fee, and is now owner thereof; and the successive occupiers of the same have been the said *John Richardson*, *Edmund Catherall*, *Joseph Littler*, *Phineas Pearson*, *William Mason*, *John Foster*, and *John Williamson*, who was succeeded in the lands, in 1771, by the defendant *Whitehead*, and the house belonging thereto before, and in 1771 was, and ever since hath been, occupied by two poor men, without any of the lands.

When deponent first knew *Coulton's* tenement, *John Richardson* was lessee thereof, from whom it came to another *John Richardson*, who purchased the reversion in fee, from whom *Thomas Whittle* bought part of the lands of that tenement, and *Ralph Jones* bought the house, and the rest of the land; and the successive occupiers of said lands were the persons before mentioned to have occupied *Richardson's* tenement, defendant *Whitehead* being occupier thereof in 1771, and the successive occupiers of the house (now become a cottage without lands) were *Ellen Richardson*, *Edward Emanuel*, *Evan Williams*, *Robert Conway*, and *Robert Barton*, occupier thereof, now and in 1771.

When deponent first knew *Buttery's* tenement, *Timothy Buttery* had a lease thereof, afterwards defendant *Whitehead* purchased the reversion in fee, and is now the owner thereof; the successive occupiers were *Daniel Peers*, and said defendant *Whitehead*, who now does, and for many years before, and in 1771, did hold all the lands; but part of the old house belonging thereto has been occupied by *John Robinson*, several

ral years before, and in 1771; and *John William* hath built a house on part of the garden spot, and hath occupied the same therewith, in and since 1771.

When deponent first knew *Johnson's* tenement, *Edward Hawkins* had a lease thereof, and defendant *Whitehead* afterwards purchased the reversion, and is the present owner thereof, except of a rood of ground which he gave deponent to enlarge a scite for his house; and the successive occupiers of the house, have been *Alice Johnson*, *Robert Conway*, *Samuel Peers*, *Margaret Whitehead*, and *Ellen Howard*; and the successive occupiers of the lands (except the rood of ground) were *William Johnson* (deponent's father) said *Robert Conway*, and *Samuel Peers*, who held the land with the house, when defendant *Whitehead* took the land without the house, and hath occupied it ever since, and particularly in 1771.

Saith, There are *ten* fewer farm houses, having lands held therewith, in *Little Sutton*, now, than there were when deponent first knew that township, besides the said house called *Briscoe's*, formerly a farm house, having lands held therewith, but now occupied by poor people.

Int. 10. Remembers a great part of *Great Sutton* common (containing about sixty *Cheshire* acres) inclosed by *Percival Bateman*, about thirty-five years ago, on which he afterwards built a house and out buildings, which, before inclosure, was greatly incumbered with gorse and heath, on which the inhabitants used to turn out their

young cattle; which house and lands were held by defendant *Bateman* in 1771.

THOMAS WALKER, aged forty-seven,

Int. 14. Saith, That about fifteen years ago, upon the death of his late father, he became tenant of *Little Sutton* hall and demesne, and the tithes of *corn and grain* of the whole township of *Little Sutton* were also let to him by Mr. *Cholmondeley*, as owner thereof.

Saith, That the rest of the farms in the said township were sold, about forty years ago, by the late *Charles Cholmondeley*, Esq; but on such sales he reserved the tithes of *corn and grain* of such farms, which tithes have ever since been let to the occupier of *Little Sutton* demesne; and that ever since deponent so became farmer of the said demesne, he retained to himself all tithes arising therefrom, and collected from all the farmers in that township the tithes of *corn and grain*, as part of the impropriate rectory of the parish, but no other tithes whatsoever, to his remembrance or belief.

Saith, his late father held said *Little Sutton* hall and demesne, and the tithes of *corn and grain* of said township; for many years before (in like manner as deponent hath done since) his death.

Int. 17. Hath heard (and particularly from three of them, who said that they had respectively signed such agreement) that the owners or occupiers of lands within the townships of *Great* and *Little Sutton*, to the number of *forty-five*,
 2 have

have entered into a contract in writing, for carrying on the defence of the defendants, *Whitehead* and *Davies*; and this deponent was likewise then told, and it is the general talk of those towns, that the persons who have signed this contract, are to contribute towards the costs of carrying on such defence, in like proportion, as their respective estates or farms are rated to the land tax.

JOHN GRICE, aged thirty-two,

Int. 7, 12, and 19. Hath known the several houses and tenements, in 1771 and still, occupied by defendant *Davies* (formerly called *Welchman's*, *Busshell's*, *Gerrard's*, and *Francis's* tenements) since 1747, when deponent's late father, *John Grice*, went to live as farmer of said *Welchman's*, *Busshell's*, and *Gerrard's*, at the house where defendant *Davies* now lives, which belongs to *Busshell's*, at or before which time all the lands belonging to the three last mentioned tenements were made into one farm.

Saith, Deponent's late father held the same three tenements together, at the time of whose becoming tenant thereof, the house belonging to *Welchman* was turned into habitations for two or three labourers or paupers, the lands being taken from it; and *Gerrard's* house was used as a back kitchen to *Busshell's*, and all the out buildings, belonging to the three tenements were held with *Busshell's*.

Saith, Defendant *Davies* now holds *Busshell's* and *Gerrard's* tenements, with the out buildings

and the out buildings and lands of *Welchman's*, and lets off the house of *Welchman's* to poor people, as deponent's father used to do; and the said defendant, to the best of deponent's knowledge, hath held the same since his father left them, viz. in 1753, or 1754, and hath since become tenant for the lands of *Francis's* tenement, the house being occupied by *Mr. George Robins*.

Saith, That after deponent's late father left *Great Sutton*, he lived in the township of *Eastham*, where he paid tithe hay in kind; and after he so came there, deponent heard him say, that it was a great hardship upon the inhabitants of that town to pay such tithe hay in kind, because the occupiers of lands in *Great* and *Little Sutton* paid no more than *one penny*, called a *tilt penny*, in lieu of the tithes of hay, mowed upon their respective tenements in those two townships, although they should happen to mow all the lands thereto belonging.

THOMAS WILLIAMS S., aged sixty-seven,
(cross examined for plaintiff)

Int. 13. Saith, That when any closes or parcels of land, situate in the parish of *Eastham*, and belonging to any houses situate in the parish of *Stoke*, were or are mowed, the vicar of the said parish of *Eastham* hath been, and is, intitled to the *tithe in kind*, of the hay gotten therefrom.

RICHARD KENDRICK, (cross examined for plaintiff)

Int. 11. Remembers some tithe hay collected from some part of *Whitby* (as he believes) lodged

ed in a barn, called *Robinson's* barn, but cannot tell whether such tithe hay was collected from lands in *Whitby*, belonging to houses in *Stoke*, or not; and deponent himself mowed a field one year in *Whitby*, within the parish of *Eastham*, the house of which lies in *Stoke*, and paid to vicar *Lebeg* (of *Eastham*) tithe hay in kind therefrom; but doth not know, that tithe hay in kind from any part of *Whitby* was ever yielded to the said vicar, *unless* the lands from whence the same was yielded belonged to farm houses within the parish of *Stoke*.

Note, The foregoing depositions were all taken on the part of the plaintiff, and read on his behalf, at the original hearing of the cause, together with several other depositions, relating to the three other defendants, who do not appeal, which, on that account, are not inserted in this series. They are here reduced into as narrow a compass, perhaps, as possible; but their direct intent and meaning has been in no instance perverted. The variety of matter contained in them, extraneous to the case of the present appellants and respondents, would, if given in full, have rendered this transcript not only voluminous, but perplexed.]

On the part of the present appellants, the two following depositions only, were read at the original hearing of this cause.

ROBERT HAYES, (of *Chester*.)

Int. 3. Knows the defendants, and believes, That defendant *Whitehead* holds in *Little Sutton*, as his own inheritance, two or three tenements, and

thinks he came into possession of them about forty years ago. Believes the defendant *Davies*, of *Great Sutton*, holds two or three tenements belonging to the family of the *Busbells*, which he may have occupied above twenty years. Says, defendant *Bateman*, lives at a place formerly called *Backford Heath*, or *Motherless Heath*, in the township of *Great Sutton*, and occupies a farm there, of what extent he does not know, but believes she and her late husband *Percival Bateman*, have held the same upwards of thirty years.

Saith, The township of *Great Sutton* hath always been reputed to be abbey lands, and to have belonged to the abbey of *St. Werburgh*, in *Chester*; and that the several townships of *Great* and *Little Sutton* were reputed to be the inheritance of *Charles Cholmondeley*, Esq; deceased, and his ancestors, and part thereof now is the inheritance of *Thomas Cholmondeley*, Esq; his son.

Int. 5. Knows not, nor believes, that any vicar of *Eastham* ever received any tithe of corn and grain from the holdings of any of the defendants; but saith, that *Sir Francis Poole*, and his descendants, have received those tithes in *Nether-Poole* hall demesne, and that *Charles Cholmondeley*, Esq; hath received the tithes of those lands in the possession of the defendants *Whithead* and *Davies*; but whether he had any tithe of corn off the estate held by the defendant *Bateman*, deponent knows not.

Believes not, that any vicars of said parish ever took any tithe in kind of any hay, from any of
the

the lands of defendants *Oxton*, *Healing*, *Whitehead*, *Davies*, *Bateman*, or any of them, knew the lands in the possession of defendant *Bateman*, whilst the same was a common, called *Backford Heath*, or *Motherless Heath*; and says, the same was inclosed between thirty and forty years ago, and was then said to belong to the said *Charles Cholmondeley*.

Saith, That *Little Sutton* hall and demesne, and the farm of defendant *Bateman*, now are (as he believes) the inheritance of *Thomas Cholmondeley*, Esq; (son to the said *Charles*). And hath heard (but knows not) that a rent (but how much he cannot tell) was paid from the demesne of *Little Sutton* to the dean and chapter of *Chester*, and that such rent was in lieu of the tithes of *Great* and *Little Sutton*.

Int. 6. Has heard, That for *Nether-Poole* hall and demesne, there was forty shillings a year paid to the vicar in lieu of all small tithes; and has heard, but knows not, that there was some difference between *Eastham* and *Sutton*, in what was paid for a cow and calf, and that when *Eastham* paid three pence, *Suttons* paid one penny halfpenny.

Remembers vicars *Griffith* and *Lebeg* had the pasturage of a cow or a horse upon the demesnes of *Nether-Poole* and *Hooton*, and believes such pasturage was at the will of the owner of the demesne, having frequently heard it was so from his father, and other people, now dead; and particularly, because he was once present at *Hooton* hall, when said *Lebeg* asked liberty from
Sir

Sir Rowland Stanley, the owner thereof, to turn two colts upon that demesne.

WILLIAM CURRY, aged sixty-six, (*examined by plaintiff, but read by defendants*)

Int. 4, 5, and 19. Saith, That during his remembrance, the impropiators of the parish of *Eastham* have received the tithes of all corn and grain (but not of any other titheable matter that deponent ever heard of) within the said parish; and the vicars have received in kind the tithes of all hay and agistment within the townships of *Eastham, with Plymyard and Carlett, Hooton* (save the demesne), *Childer-Thorn-ton, and Over-Poole*, and all other small tithes, or some *modus* or composition in lieu, throughout the parish; but pig, goose, wool, and lamb, are usually paid in kind.

Saith, Said vicars have received from *Hooton* hall, and demesne (as deponent hath heard, and for the *reasons after mentioned* believes) as a *modus* or composition in lieu of tithes of hay and small tithes, forty shillings yearly, and also the keeping there of a horse *durante bene placito*. And also from *Neiber-Poole* hall and demesne (as deponent hath heard, and for the *reasons after mentioned* believes) as a *modus* or composition in lieu of tithes of hay and small tithes, forty shillings yearly, and the keeping there of a cow or horse *durante plene placito*.

See No. 4. of
this Appendix.

And deponent is the rather induced to believe the same, because he well remembers, that on the death of vicar *Griffiths*, a short time before
Easter,

Easter, in 1728 (this deponent's father being then one of the church-wardens of the parish),
 " *A table of the tithes due in the parish of East-*
 " *ham, according as they had been formerly received*
 " *by William Seddon and George Beckett, vi-*
 " *cars of Eastham,*" (that being its title) was sent from the office of the ordinary of the diocese, as deponent hath heard his late father say; in which table such respective *modus* or composition for *Pool* and *Hooton* hall appears set down.

And as a further reason for such belief, deponent says, That his late father going out of office on *Easter Monday*, 1728, the succeeding church-warden collected, during the vacancy of the vicarage, the vicar's tithes and dues by such table as his guide; and such table being wore out, by collecting from place to place, a copy was made thereof by the then parish clerk, and that the vicar's tithes and dues were collected by such copy, after the said table was so worn out; but knows not whether the said copy was ever examined with the said original table.

Saith, The paper writing now by him produced, marked *L.* is the copy so made by the parish clerk, and in order to the producing thereof, he received the same out of the church chest, where it is usually kept locked up.

Note; On the rebearing, no new evidence was heard on the part of the plaintiff, save that the *terriers* of the parish, produced on the original bearing by the defendant Maddock, were now read on the plaintiff's behalf.

On the part of the present appellants, the tithe table (appendix, No. 4.) was read, and the depositions of Mrs. Ellen Currey, and Joseph Critchley, so far as the same related to the proof of such tithe table. But these depositions are here omitted, as they were not, in meaning or substance, different from that of William Currey, herein before abstracted.

No. 2.

The Terriers of the Vicarage of Eastham, dated in 1696.

Imprimis. One vicarage house, one barn of two bays, one stable at the end of it. A bay of low housing for cows, two small gardens, and an orchard.

Item. 2. One croft adjoining to the house, being half an acre. One pasture field of three acres. One loont in the town field next the way, half an acre. One loont in the same field of three measures sowing of barley. One other in the same field of two measures sowing. One other of one, which hath been exchanged with *John Grice's* tenement of *Eastham*.

Item. 3. *Great Sutton*, and *Little Sutton*, and *Whitby*, are freed from paying of tithe hay, every house paying a penny, called a tilt penny, upon what account we know not. They likewise pay for no calves, but one penny half-penny a cow, the reason being also unknown to us.

Sutton hall pays, in lieu of all small tithes, one pound six shillings and eight-pence. It has paid more, never less.

Hooton,

Hooton and Poole halls, each, by custom, pay two pounds *per annum*.

Item. 4. Eastham, Hooton, Poole, and Childer-Thorn-ton, pay one penny for a farrow cow, one penny half-penny for a milch cow; and if *five* have calved, they pay two shillings and six-pence; if ten, five shillings.

In the forenamed places, mortuaries are payable to the vicar. And tithe herbage after two shillings in the pound, if the occupier lives out of the parish.

Item. 5. No tithes but corn belong to the impropiator, all other to the vicar.

Item. 6. No augmentations have been made to the vicarage that we know of.

Robert Griffiths, vicar.

John Moores,
Robert Walton, } Church-wardens:

Note; *The two church-wardens of this parish are elected annually on Easter Monday, one being nominated by the vicar for the time being, the other by the parish at large; in the election of which latter warden, being the representative for the parish, the vicar has no vote. See the deposition of Jos. Chritchley, Int. 20 and 21, read at the original hearing of this cause.]*

No. 3.

*The Terriers of the Vicarage of Eastham, dated in
1709,*

1. A vicarage house about three bays of building, with a small brew (or bake) house adjoining thereto. An old decayed barn, and a stable, and cow house, about three bays of buildings in all.

2. Two small gardens, a small young orchard, with a croft adjoining to the barn, in all about half a *Chehire* acre.

Four loonts in the town field, in all about ten measures sowing of barley, or an acre and quarter.

One pasture field, about two acres and a half, called the *Rake Hey*.

3. *Sutton Magna*, as also *Sutton Parva*, and *Whitby*, pay only one penny a house for their hay; upon what account we know not.

Sutton hall pays one pound six shillings and eightpence, in lieu of all small tithes.

Hooton hall pays forty shillings, by way of composition in lieu of the same, and their keeping of an horse.

Pool hall pays forty shillings, and their keeping of a cow or an horse for the vicar upon the same account.

4. Mortuaries due to be paid in *Eastham*, *Hooton*, *Poole*, and *Childer-Thornton*, dying possessed of debtless goods, from ten nobles to thirty pounds, three shillings and four-pence; from thirty to forty, six shillings and eight-pence; forty or above, ten shillings.

Wool, lambs, pigs, geese, and gorse, due throughout the parish.

Hay only payable in *Eastham cum Carlet*, and *Phymyard Childer-Thornton, Hooton, and Poole*, the other townships freed by a tilt penny.

Calves payable for in *Eastham*, *Childer-Thornton*, *Poole*, and *Hooton*, if five, half a crown; if ten, five shillings; otherwise one penny half-penny a cow; and one penny for a farrow cow.

5. No tithes belong to the impropiators, but that of corn, the rest to the vicar, except where already noted.

6. No augmentation hath been made within our knowledge but only the taking off of her Majesty's tenths, before payable by the vicar.

Robert Griffiths, vicar.

William Whitehead,
Robert Spark, } Church-wardens.

No. 4.

*A Table of the Tithes due in the Parish of Eastham, according as they have been formerly received by * William Seddon and George Beckett, Vicars of Eastham.*

Mortuaries due in *Eastham, Hooton, Poole, and Childer-Thornton*, by custom, to be paid thus: goods from twenty nobles to thirty pounds, due three shillings and four-pence; from thirty to forty pounds, due six and eight-pence; from forty pounds and upwards, ten shillings. No mortuaries are due where the personal estate does not amount to twenty nobles, the debt deducted.

Easter roul four offering days, garden penny, hen penny, six-pence; for a man and his wife receiving the sacrament, one penny, in all seven-pence.

For a farrow cow, one penny; a cow and a calf, one-penny halfpenny; if five have calved, two shillings and six-pence; if ten have calved, or some be ready to calve to make up the number of ten, then five shillings.

Easter dues in *Whitby* and the two *Suttons*, no hay; no tithe calves, no mortuaries, only a penny a cow, and from every house a tilt penny.

* Note: William Sedden was inducted in February, 1637; was sequestered by the usurpation in 1646; was restored again in 1660; and died in 1664.

George Beckett was inducted June 24, 1666; and died in 1694.

At *Easter* a master to pay for a man servant three-pence; for a maid servant two-pence; for a colt two-pence; for bees, if the hive be taken, two-pence; throughout the whole parish.

Wool, lamb, gorse, hemp and flax, geese, pigs, due throughout the whole parish.

For a tradesman four-pence, throughout the parish.

For christening a child and churching the woman, six-pence; but if done at the house, one shilling.

Burials in *Eastham Hooton, Poole, Thornton*, nine-pence, and to the clerk three-pence; in *Whithy* nine-pence; the *two Suttons* six-pence,

Burials in the chancel, to the vicar six shillings and eight-pence; for funeral sermon ten shilling.

Weddings, though not married in the parish two shillings and six-pence.

Plymyard tithes due in kind or upon composition paid to the above named vicars, one pound ten shillings.

Poole hall two pounds, and keeping of a cow or horse *durante bene placito*.

Hooton hall two pounds, and keeping a horse *durante bene placito*.

Hay and all other small tithes paid in kind in *Eastham, Hooton, Poole, Thornton, Plymyard, and Carlet*.

For the ferry boat two shillings *per annum*, or ferry free.

Tenths to be paid one pound five shillings and three-pence halfpenny.

Pension to the dean and chapter one pound thirteen shillings and ¹¹₁₂ pence.

No procuration to be paid by the incumbent of *Eastham*.

No. 5.

The Case of Carte against Ball, extracted from the Records of the Court of Chancery.

In Chancery,
13 May, 1774.

Thomas Carte, Administrator of
John Carte, late Vicar of
Hinckley in the County of *Leicester*, Clerk, deceased, } Plaintiff.

Robert Ball, *Thomas Taylor*, *Thomas Shewell*, and others, Occupiers of Lands in the Parish of *Hinckley*; the Dean and Chapter of *Westminster*, ImproPRIATORS of the said Parish, and *Frances Trotman*, their Lessee. } Defendants.

THE plaintiff's bill stated, that by some ancient endowment, usage, or prescription, the vicars of *Hinckley* were intitled to, and ought to have received,
all

all tithes (corn and hay, as well as small tithes) whatsoever yearly arising within the township, or hamlet, of *Hydes*, part of the parish of *Hinckley*; and charged that such tithes particularly appeared to belong to the said vicars by a certain *terrier* of the parish, dated in 1638, and signed by the then vicar and church-wardens.

That the defendants, the *occupiers*, had, during the whole of the said *John Carte's* incumbency (*viz.* from 1720 to 1735) holden diverse lands in the hamlet of *Hydes*, and had reaped therefrom great quantities of corn and hay, and had carried away the same, together with diverse quantities of small tithes, without having made any satisfaction for the same to the said *John Carte* during his life.

PRAYER OF THE BILL.

That the defendants the *dean and chapter*, and their lessee, might *admit the title of the vicar to all the tithes arising within the hamlet of Hydes*; and that the other defendants, the *landholders*, might be decreed to account with the plaintiff for the several tithes aforesaid.

The defendants, the *occupiers*, said, they did not believe the plaintiff was intitled to all tithes whatsoever in kind, either within the precincts of *Hinckley* in general, or within the hamlet of *Hydes* in particular; but insisted that a yearly *modus* of seventeen shillings was payable to the vicar in lieu of the tithes of the hamlet of *Hydes*, in manner following; *viz.* by the defendant *Ball*, six shillings and three-pence; by the defendant *Shewell*, five shillings and one-penny; by the defendant *Stock*, one third; and by the defendant *Taylor*, two thirds of five shillings

and eight-pence yearly, making, in the whole, seventeen shillings *per annum*.

The defendants, the dean and chapter, admitted that such a terrier as that charged in the bill might exist, but insisted that it was of no validity, the same having been *contrary to the usage* in the parish before, and since, its exhibition: and further insisted, that Queen *Elizabeth* being seised of the manor, rectory, and parish, of *Hinckley*, and of *all manner of tithes*, both great and small, yearly arising within the said parish, and of the advowson of the vicarage thereof, did on the 21 day of *May*, in the second year of her reign, grant to the said dean and chapter, and their successors, the said manor, rectory, and church, with all their rights, members, and appurtenances, *tents, oblations*, and profits whatsoever; by virtue of which grant they were seised of *all manner of tithes*, both great, and small, yearly renewing within the said parish.

The defendant *Trotman* said, that the dean and chapter did, by an indenture, bearing date *January 12, 1737*, (two years after the death of the late vicar, *Carte*, in whose right the plaintiff claimed) grant to her (for the lives of three persons, all then living) all manner of tithe corn, &c. of the parish of *Hinckley*; but that she never received, or claimed any right to, the tithes in question, and was willing the plaintiff should enjoy the same.

[*At the hearing of the cause there appeared no proof whatsoever (save the admission of some of the defendants as above stated) that the vicars were originally endowed with the tithes demanded by the bill; or that they had ever received any tithes whatever,*
either

either, in kind, or sub modo, within the rest of the parish.]

It was decreed by the Lord Chancellor (*Hardwick*)—that the parties should proceed to a trial at law on the following issue: “whether the said *John Carte* was, in his life-time, intitled to take all manner of tithes, as well great as small, arising within the hamlet of *Hydes*, or to any, and what, part of such tithes,” with liberty to indorse the *posse*, in case it should be found, on such trial, that the said *John Carte* was intitled to some parts of the said tithes, and not to the whole.

N. B. Among the papers in this appeal, there is another intitled, “A short abstract of the respondent’s case,” but it containing only a brief repetition of what hath already been fully and at large laid before the reader, in the above cases and appendixes, these reasons induced the compiler to omit it, and to mention such omission, to prevent the reader considering the omission a neglect. *J. R.*

Hilary Term, 19 Geo. III.

February 2, . A. D. 1779.

In the House of Lords.

Joseph Cullimore and *Joseph Lim-* } Appellants.
brick, the younger,

John Bosworth, Doctor in Divi- } Respondent.
nity,

The Appellant's * Case.

THE appellants conceiving the original decree pronounced by the court of *Exchequer*, in *Michasmas* Term, 18 Geo. III. [which see] to be erroneous, so far as the same declares the respondent intitled to every tenth morning's meal, and to every tenth evening's meal of milk, and orders the appellants to account for their tithe of milk in that manner, and also to pay unto the respondent his costs of suit in respect thereof; and that it ought to have been declared by the said decree, that the respondent was only intitled to every tenth meal of milk milked in the said parish of *Tortworth*; and the appellants also conceive, that the respondent's bill ought, so far as the same seeks to establish any other mode of setting out the tithe of milk, than by every tenth meal, or to have an accompt of tithe milk from the appellants, to have been dismissed, and that the appellants ought not to have been ordered to pay costs in respect thereof; the appellants therefore have humbly appealed from the said decree to your lordships, and humbly hope, that so

* For which see the case of the defendants in this cause, under *Michasmas* Term, 18 Geo. III.

much of the said decree as is hereby appealed from, shall be reversed, and that your lordships will be pleased to order that the respondent's said bill, as to the claim of being paid tithes of milk as therein is expressed, be dismissed, for the following (among other)

R E A S O N S.

1. The mode of setting out tithe of milk by the tenth meal insisted on by the appellants, has been long established and universally received; it seems to have been first introduced from an inclination to favour the clergy, who, in ancient times, were supposed to be intitled to only a tenth part of every meal of milk, which at every milking they were obliged to send for and take away, and to whom therefore it was much more convenient to have the whole of every tenth meal allotted to them, which they might receive altogether at one milking, without the trouble of sending more than once for their tithes; the mode of tithing contended for by the respondent, and established by the decree, that is, by giving to the respondent the whole meal of every tenth morning and every tenth evening, is perfectly new; instead of giving to the parson the tenth meal, it gives him the nineteenth and twentieth meals, which is not only not warranted by the cases in which the parson has been determined to be intitled to every tenth meal, but is directly contrary to them; and it seems, that the parson might with as great appearance of reason have pretended a right to the milk of the first and the twentieth meals, every meal or milking being in itself, as well as in the language of the cases relative to this subject, perfectly distinct, there being no more connection
3 O 4 between

* between the nineteenth and twentieth meals, than between the first and the twentieth.

2. The mode of tithing thus established by the decree is not only not warranted by any decision relating to the tithe of milk, but is also contrary to the mode of tithing, which prevails with regard to all other *species* of tithes, and to the general rules by which this kind of property is regulated; the owner of tithes being universally intitled to the tenth part of the subject to be tithed, and nothing more, and the decree here giving to the respondent not the tenth part of the milk, but the nineteenth and twentieth parts.

3. This mode of tithing by the tenth morning and tenth evening's meals will subject the farmers who have large dairies to most unreasonable hardships, where the tithe of milk is thus taken in kind; besides other inconveniencies to the farmers above pointed out, their calves, which can only be supported by new milk, must every tenth day be destitute of food and subsistence; by such a mode of tithing, therefore, a parson will acquire a power of exacting an exorbitant recompence for his tithe of milk, or where a farmer has incurred his resentment, of injuring and oppressing him, by taking such tithe in kind.

*The Respondent's * Case.*

The appellants have thought fit to appeal to your lordships from that part of the said decree, respecting

* See the case of the plaintiff, in this cause, under *Michelesmas Term* 18 Geo. III.

the tithe of milk above stated ; but the respondent hopes the same will be affirmed for the following, among other reasons, to be offered at your lordship's bar on the hearing hereof.

R E A S O N S.

1. That a rector is intitled, *de jure*, to a *full tenth* of all *milk* of cows within his rectory, as well as a tenth of all other titheable matters there arising ; and so the court of *Exchequer* declared,

2. That a mode of setting out a *fifteenth*, or any thing *less* than the *full tenth*, for tithe, as appellants had done, cannot be the true rule of tithing, if the rector be intitled to a *full tenth*.

3. That a *prescription* to pay *less than a tenth*, is a *void prescription*.

4. That when the tenth meal was originally declared to be right of the parson, it was substituted in the room of the tenth quart, or the tenth dish, or the tenth part of each meal ; it was never meant to give him less than a full tenth of the titheable object ; it was meant to give the tenth in a more convenient and useful manner ; it was therefore auxiliary to the general right of a *free tenth*, to *secure* and not to *destroy* that right.

5. That the setting out the tenth part of every meal, as also, the setting out the tenth of each cow's milk at each milking, have been *condemned*, as founded in *inconvenience* to the parson, from the great unnecessary trouble and expence it would create, by those numerous and frequent tithings ; upon the same principle, the attempt of the appellants to make one and the same day to be successively and perpetually
the

O B J E C T I O N.

Objections answered.

But to this *inconvenience* is objected on the side of the appellants.

A N S W E R.

No inconvenience ought to outweigh the justice of the cause; the farmer ought not to be permitted to take a manifest unjust advantage to himself, by yielding one third less than what is due on that account.

O B J E C T I O N.

That if two successive milkings, viz. in a morning and an evening, are established as the tithe meal, then the farmer's calves on that day must go without new milk, and there will be no whey to give the pigs, which, in dairy farms, is what the farmer depends on.

A N S W E R.

Calves are titheable when weanable, that is, when of an age to live without the dam, or natural food, as grass or hay; the appellants say, when the calves are three weeks old in summer, and one month in winter, they can so live; consequently till those periods the whole milk of the cow is applied for the support of it's own calf, and none set out for tithe; hence no inconvenience or want of milk for calves results from this mode of tithing, as the whole milk of each cow is applied for the support of it's own calf until weaned and gone; at which time the cow may be said first to come to the pail, and to be titheable; that the milk of each cow is alone sufficient

sufficient for raising its own calf ; that as the calf advances in age, it has daily *less occasion* for milk, being gradually more and more able to support itself by grafs and hay, until it accomplishes the full weanable age, to live solely on the same food as the dam does ; that the calves destined for tithes, are always left by the appellants in a state of nature, to subsist on the milk of their proper dams only.

The law of tithes, as well as of other things, should rest on principles that are fixed and certain ; it is intended to be a rule of conduct equally obvious to the receiver of tithe as to the payer ; but if the introduction of new and artificial modes of rearing calves, is to vary and alter the parson's right, originally settled on the immutable laws of nature, there will remain no settled law, no known rule of conduct for the parson, but the will and capricious practices of the farmer will constitute the law, and why not in every other *species* of tithe, if allowed in this ?

That it appears abundantly in proof in the cause, that in dairy farms (such as the appellant's are) calves fall between the months of *January* and *April* yearly, and at no other times in the year, except an accidental calf, and all calves are generally gone from the cows by the month of *April* ; so that there are seven months yearly, including the whole of the summer, the most advantageous season for making butter and cheese, when the cows are without any calves, consequently their milk is not then wanted for the support of their calves.

As to pigs, it is notorious, that they may be, and are supported from the preceding day's milk, as well

as from whey, wash, corn, and other such like food, and that they never depend upon the produce of the day for subsistence, but are provided with a stock of food beforehand.

Wherefore the respondent humbly hopes, that that part of the said decree, complained of by the appellants, respecting the mode of setting out tithe milk, will be *affirmed with costs*.

February 2, A. D. 1779.

Judgment of the
House.

Ordered and adjudged, that the appeal be dismissed, and the decree complained of, affirmed.

See *the original cause under Michaelmas Term, 18 Geo. III.*

February 9, A. D. 1779.

Cause * from the Court of Chancery.

Pyke against Dowling.

The rankness of a *modus fortithes*, is a question of fact, and not of law. 2 *Black. Rep.* 1257.

THE plaintiff *Robert Isaac Pyke*, as vicar of *Chew Magna*, in the county of *Somerset*, is intitled to all the tithes of the parish of *Chew Magna*,

* The reader may observe, that there are but few cases in this collection, sent from courts of equity to those of common law, either upon points of law, or matters of fact; which is true; for the compiler has not made those cases the objects of this collection: those inserted were accidentally met with; for except the reports of Mr. Justice *Blackstone*, and of Sir *James Burrow*, no Common Law books of determinations respecting tithes have been consulted; the collector presuming that he should have been considered as *travelling out of the record*, had he given those cases. However, if they should be thought necessary, and a future opportunity should offer, perhaps the reader may be put into the possession of them. See the SUPPLEMENT.

and

and hamlet and chapelry of *Dundry* (except the tithe of some ancient demesne lands called *Overlands*) or to certain *modus*es for the same, and in lieu thereof.

The defendant *Dowling* is the owner and occupier of a certain farm and lands within the said vicarage and chapelry, or the titheable places thereof, and hath raised and kept many lambs upon his said farm, "and sets up a *modus* of two shillings and six-pence to be paid to the vicar of the vicarage aforesaid, on 5 April in each year, being *Lady-day*, old stile, in lieu of every tenth lamb in kind."

The question for the opinion of the court is,
Whether such modus of two shillings and six-pence for every tenth lamb, to be paid on 5 April in each year, is a good modus, or not.

Heath * for the plaintiff, argued that it was bad, as being two rank, and out of all proportion to the price of lambs in the time of *Richard the First*, according to the calculations of Bishop *Fleetwood* in his "*Chronicon pretiosum*," and cited *Grascomb* and *Jefferies*, A. D. 1687, and † *Layfield* and *Delap*, both mentioned in ‡ *Chapman* and *Smith*, 2 *Ver.* 506. to shew the antiquity of this objection; so in Lord *Raym.* 1163. *Powys* Justice said, that such *modus*es were always over-ruled, when he sat in the *Exchequer*; accordingly in § *Benson* and *Watkins*, *Bunb.* 10. a very rank *modus* was over-ruled.

Grascomb and Jefferies. Layfield and Delap.

Grose § for the defendant insisted, that though a court of equity might determine as they pleased,

* See "*Nomenclature of Westminster-hall*," *ut supra*. J. R. † See this case under Hilary Term, 3 *Wil.* III. J. R. ‡ See this under Trinity Term, 27 & 28 Geo. II. J. R. § See this under Hilary Term, 3 *Geo.* I. ¶ See said "*Nomenclature*." J. R.

yet when they sent a question to be decided by the courts of law, it must be taken up upon legal grounds; rankness, as it is called, is only evidence against the antiquity of a *modus*, but the question, whether the *modus* is good, must mean whether it is unreasonable or unjust; and that pre-supposes the *modus* to have existed, in point of fact, from the time of legal memory; and if so, what objection can be raised to this *modus* in point of law.

And by the court, (in the absence of Gould Justice) courts of equity, which are judges of both the fact and the justice of the case, may certainly over-rule a *modus*, where they see that the internal evidence against the possibility of it's immemorial existence is so strong, that it would be nugatory or oppressive to send it to be tried by a jury (and by *Blackstone J.*) so it was done by Lord *Hardwick* in *Moore* and *Beckford* [which see under *Hilary Term*, 24 Geo. II. in SUPPLEMENT] so in *Torriano* and *Legge* [which see under *Trinity Term*, 3 Geo. III.] six different *moduses* over-ruled for being too rank, without directing an issue to try any of them. But when it's *goodness* is referred to a court of law, we must take it for granted, that the fact, of it's having immemorially existed is admitted, and only consider what objections may be made to it in point of law, as for uncertainty, inequality, &c. We shall certify our opinion to the *Chancery*.

The Certificate was as follows:

“ We have heard counsel on both sides, and have considered this case; and as the case supposes the existence of the *modus* in question from time immemorial, which we conceive to
be

Hilary Term, 19 Geo. III.

945

be a question of *fact*; we are of opinion, that there does not appear any reason why this should be considered as a void *modus*, in point of law;

W. De Grey.

W. Blackstone.

G. Nares.

9 Feb. 1779.

Trinity Term, 20 Geo. III.

June 23, A. D. 1780.

In the *Exchequer*,

The Reverend *John Hutchins*,
clerk, rector of the parish and
parish church of *Dittisham*, in } Plaintiff
the county of *Devon*,

Langdon John Full, *Edward Lus-*
combe, *Richard Furneaux*, *John*
Webber, *Robert Browne*, *John* } Defendants,
Dearin, and *Margaret Soper*,
farmers and occupiers of lands
in the said parish of *Dittisham*,

The case of the * Plaintiff.

THE plaintiff became rector of the parish of *Dittisham*, in the county of *Devon*, in December 1768, and as such, in Trinity Term 1777, filed his original bill in the court of *Exchequer*, against

The tenth meal of all the whole herd of cows is to be set out at one and the same time.

* Taken from the respondent's case, on appeal in this cause.

the

Trinity Term, 20 Geo. III.

the defendants, who were and are owners and occupiers of lands in *Dittisbam*, for several species of aithes, and among them for the tithe of milk.

That the defendants each put in their answers to the said bill.

That in *Trinity Term, 1779*, the plaintiff amended the said bill, and confined it to the tithe of milk only, and stating the plaintiff's induction, in 1768, to the said rectory, and that he was then the rector thereof.

That the defendants had, since he had been instituted and inducted, occupied, and then did occupy certain farms and lands within the said parish of *Dittisbam*.

That the defendants had severally in each year kept on their respective farms and lands, several milch cows, from the times after mentioned, *viz.*

The said defendant *Pull*, from the month of *December, 1773*.

The said defendant *Luscombe*, from the month of *February, 1775*.

The said defendant *Furneaux*, from *3 March, 1775*.

The said defendant *Webber*, from the month of *June, 1774*.

The said defendant *Browns*, from the month of *May, 1775*.

The

The said defendant *Dearin*, from the month of *June*, 1774.

The said defendant *Soper*, from the month of *March*, 1776.

That the said defendants had respectively had, in each year, large quantities of milk from their cows in the said parish; and that the plaintiff was intitled to the tithes of the whole herd of cows belonging to the said defendants respectively: and that the said defendants had neglected to set out the said tithe of milk fairly and legally, or to make any satisfaction for the same.

And the plaintiff prayed, that an account might be taken of all the milk, had by the defendants in the years aforesaid, from their said cows, in the said parish of *Dittisham*, and that they might be decreed severally to pay the plaintiff what should appear to be due to him for the single value of the tithe.

That the said defendants, by their answers sworn 26 *October* 1779, admitted the plaintiff's institution and induction, and that they had respectively kept several cows, from which they had respectively large quantities of milk, and that the defendants had constantly set out fairly the tithe of the said milk, in the manner therein set forth and stated, and which is as follows, *viz.* "by setting out the tenth meal of the milk of each of the cows kept by the defendants, as such cows came to the pail, or first came in milch, and the tenth meal together of all such cows, as happened to come in milch on the same day, which method is, as they alledged, agreeable to the custom immemorially used in *Dittisham*, in setting out the

tithe of milk, as they had heard and believed; and which custom they presume to be a fair, just, and reasonable one; as thereby the plaintiff would have the tenth meal of milk of each cow of some mornings and some evenings throughout the parish, as the cows came in milk, and thereby the defendants would also daily have milk for rearing of calves, and for the use of their respective families, which would not be the case if they were to set out the whole of their milk every tenth day, or the tenth meal of each of their respective herds of cows at once" wherefore they insisted, that such custom should be established, and that the defendants should not be decreed to account for the tithes of their milk.

To which answers the plaintiff replied, and a commission issued for examining witnesses on the part of the defendants only, and they gave evidence in support of their said answers, but which did not by any means prove, that there was any such custom of setting out the tithes of milk, in the said parish of *Dittisham*, as was alledged by the answers.

That the cause came on to be heard before the barons of his Majesty's court of *Exchequer*, on 23^d June 1780, when the court ordered and decreed, that it should be referred to *Francis Ingram*, Esq; the deputy remembrancer, to take an account of what was due to the plaintiff from the defendants in respect of the tithes in kind of milk arising from their respective cows by them kept in the said parish of *Dittisham*, during the time demanded by the plaintiff's amended bill; and it was further ordered and decreed, that the said defendants should pay to the plaintiff his costs of the said suit, to the time of the said decree, to be taxed by the said deputy remembrancer.

The

*The Case of the * Defendants*

The plaintiff was presented to the rectory of *Dittisham* in the year 1768, in which parish it had been the custom for the rector to agree or compound annually with the several farmers and occupiers, for such of their great and small tithes, for which no *modus*, or other payment in lieu of them, had been constantly paid; and the plaintiff, at his first coming to the rectory, pursued the same mode till the year 1773, when he refused agreeing with several of the parishioners, and insisted on having his tithes in kind; and frequent disputes happened between them, as to the mode of the tithing, several suits were instituted in the court of the archdeaconry of *Totnes*, and the parishioners not being able to prove the parole agreement between the plaintiff and them, the plaintiff obtained decrees against them in his favour,

The defendants, or such of them as could not compound with the plaintiff for their tithes, afterwards set out their tithes regularly, and particularly their tithe of milk, according to the customary mode of setting out their tithes, as immemorially used in that parish, which was to set out the tenth meal of each cow, as such cow came to the pail, in a fair and regular manner; but the plaintiff refused to take such tithe in that manner; and insisted, that they should set out the tenth meal of all their whole herd of cows at one and the same time, and the defendants refusing to comply with this,

The plaintiff, in *Michaelmas* term 1777, filed his bill in the court of *Exchequer*, against the defendants

* Taken from the appellant's case in this cause.

and two other persons, (who afterwards died, and were therefore never brought to an hearing) thereby charging them with substraſtion of their tithes, and a variety of frauds; and demanding, as rector, an account of all of them, of their reſpective lands and tithes, both great and ſmall, within the ſaid pariſh, from the month of *December* 1768, and for payment of what ſhould appear to be due to him on ſuch account, though he had compounded with and received from them, an annual payment in ſatisfaction of their ſeveral tithes down to 25 *March* 1774, and they had tendered the ſame to him on 29 *September*, 1775.

The ſeveral defendants answered ſeparately to this bill, and by their answers ſet forth accounts of their ſeveral lands and tithes, as prayed by the plaintiff's bill, from 1768 to 1777, and the particular computation which they had made for ſuch years as he had agreed with them reſpectively for a money payment in lieu of tithes, from 1768 to *Michaelmas* 1774, when he gave notice to them to ſet out their tithes in kind, and ſaid they had paid or tendered to him different ſums for ſuch ſmall tithes as they inſiſted were covered by *modus*es or payments in lieu of tithes in kind; and they all ſaid in their ſeveral answers, that they had reſpectively ſet out the tithe of milk due from them, according to the immemorial cuſtom uſed in the ſaid pariſh, which was the ſetting out the tenth meal of milk from each cow, as ſuch cow came to the pail, of which they had conſtantly given notice to the plaintiff, but he neglecting or reſuſing to ſend for the ſame regularly, the milk had been kept in their pails and veſſels till the next milking time, when the pails and veſſels being wanted, the tithe milk was thrown away, for want of proper veſſels belonging to the plaintiff being left to hold the

the same, and not given to the dogs or pigs, as mentioned in the bill, by which means the same was lost to the plaintiff; but as they had been advised such loss was entirely owing to the default of the plaintiff or his servants, they hoped they were not obliged to make any satisfaction for the same.

The plaintiff conscious, on the coming in of these answers, that he could not support any claim for tithes, except for the tithe of milk, where only the manner of setting them out was in dispute, and not the tithe itself, on 21 *June* 1779, obtained an order for amending his bill, on payment of twenty shillings costs and in *Trinity* term filed his amended bill, by which he abandoned every demand for tithes, except that of milk, which he charged they had not set out fairly and legally, although they had been severally required so to do; and therefore praying, that an account might be taken thereof; and that the defendants might be decreed severally and respectively to pay what should appear to be due to him for the single value of tithes of such milk.

The defendants on 29 *October* following put in a joint answer to this amended bill, by which they said, they had set forth, in their respective answers to the original bill, a just and true account of the number of milch cows from time to time, by them respectively kept, and of the milk had by them respectively in each year, to the time of filing the original bill, which they prayed might be taken as part of this their answer; and denied that either of them ever neglected or refused to set out the said tithe of milk fairly and legally for plaintiff, as they apprehended; for they said, that the same has been constantly set out fairly and justly in the manner set forth by the defendants in their respective answers to the original bill, and

which is as follows, viz. " By setting out the tenth meal of the milk of each of the cows kept by the defendants, as such cows came to the pail, or first came to milk, and the tenth meal together of all such cows as happened to come in milk on the same day, which method is agreeable to the custom immemorially used in the said parish of *Dittisham*, in setting out the tithe of milk, as defendants have heard and verily believe," and which custom they humbly presume to be a very fair, just, and reasonable custom; as thereby plaintiff will have the tenth meal of milk of each cow of some mornings and some evenings, throughout the parish, as the cows come in milk, and thereby defendants will also daily have milk for rearing calves, and for the use of their respective families, which will not be the case, if they are to set out the whole of their milk every tenth day, or the tenth meal of each of their respective herds of cows at once, wherefore defendants hope that such an immemorial custom and usage will be established, and that they or any of them will not be decreed to account for the tithes of their said milk which they have respectively fairly set out in manner aforesaid, and which plaintiff might have had and taken but for his own wilful neglect; and deny that they or any of them ever omitted or refused to set out the said tithes of milk, or ever endeavoured to conceal the same, or refuse to discover what milk they have respectively had from their said cows, in the said years, in the said parish, or withheld or detained the tithe of such milk from plaintiff, or ever pretended that he was not rector of the said parish and parish church of *Dittisham*, or that defendants or any of them had not been the occupiers of any lands within the same parish, which they respectively had occupied within the times aforesaid, and denied that there is

now

Now due from them to plaintiff any tithe of milk, for that the tithes thereof have always been justly and fairly set out according to the custom of the said parish.

The plaintiff in *Michaelmas* Term, 1779, replied to this answer, to which the defendants rejoined, and the cause being at issue, commissions were issued for the examination of witnesses, in which the plaintiff joined, and several ancient and other witnesses were examined on the part of the defendants, but not a single witness on the part of the plaintiff,

Mary Tucker, widow, aged seventy, says she was born at *Dittisham*, and lived there till she was twenty-three, when she married, and lived out of the parish till about five years before her examination; and to the second interrogatory says, that she lived with her father from her birth till married, and during that time he occupied lands in *Dittisham*, and that one PLACE was rector of *Dittisham* until examinant was about twelve years of age, when he died, and during all that time he was under composition with the parishioners for all tithes, and that *Richard Sheldon* succeeded him as rector, and took composition for all the tithes for some years, and demanded the tithes in kind of milk, of the occupiers, as she believes, for two or three years, and then said SHELTON compounded with her said father for all tithes, and all other occupiers of land for the tithes till his death, and that the custom of setting out tithes in kind of milk, during the time said SHELTON demanded tithes in kind, her father set out the tithes of milk as follows, viz. " The tenth meal of every cow, after it became fit for use, from the time of calving, and that every cow had its name,

name, and that her father used to give notice to said SHELTON of every such cow that came to the pail, when the tenth meal would become due," and that such notice was not continued for every tenth meal, but was left to be remembered by said SHELTON, and when such or any other cow came to the pail after [having, J. R.] another calf, then the same notice was given as before, and that said SHELTON took the tithes of her said father's milk regularly in general, in the same manner as before mentioned, but sometimes it was neglected to be fetched, and that the tenth meal as set out, if not fetched by said SHELTON or his servants, was thrown away; and had heard and believed, that the different occupiers of land, during the time aforesaid, set out the tithes of milk, in the same manner as her father, which she believed was sometimes fetched by SHELTON or his servants, and was sometimes omitted in the same manner as her said father's; and said that she became acquainted with said custom by living with her said father, and milking his cows, and that she understood the other occupiers of land within said parish set out their tithes in the same manner as her father, during the time aforesaid, but did not recollect she had been informed by any person or persons, now dead, any thing concerning the custom and manner of setting out tithes in kind of milk, within the said parish, prior to the time set forth; and to the third interrogatory says, she did not know any other instance of setting out tithes in kind of milk within said parish, or any other manner, or by any other rector save by SHELTON; SNOW and MILLS, the two succeeding rectors, having always taken composition for all tithes, save that she has heard, that plaintiff has for several years past demanded tithes in kind of several occupiers of land,

and that several of them then set out their tithes of milk in the same manner as her father and others did, during the time the same was so set out in SHELDON's time, but believes plaintiff refused to fetch them away.

Thomas Leak, aged seventy-two years, says, he knows the parties, and has been acquainted with the said parish for sixty years last, having constantly resided there, and that he was acquainted with the manner of setting out tithes in kind of milk by the occupiers, which custom he had known upwards of fifty years last; being apprentice to *Elinabeth* and *Alice Baderer*, who occupied lands within the said parish, when a dispute arising with SHELDON the then rector and the parishioners about tithes, and said SHELDON then demanding same to be rendered in kind, he was ordered by his mistresses to set out the tithes of their milk in kind, which he did in the following manner, having then two cows in milk. "He set out the tenth meal of these two cows, which the rector fetched away by his servant, and so continued till another cow calved, when he, by order of his mistresses, gave notice to the rector to fetch away the tenth meal of that new calved cow; which notice he used to give the rector, or leave word at his dwelling house, upon every new cow's coming to pail, and set out the milk accordingly, which milk the rector usually sent for and fetched away," but would sometimes neglect to do, when the pails being wanted, the milk was thrown away, "which custom he believed was made use of by the rest of the said parishioners, from whom the rector then demanded the same in kind;" and that while he was apprentice, one *John Leach*, then a labourer with his mistresses, and four-score years of age, told

told him he was born, and had constantly lived in the parish; that the custom of setting out tithe milk was as before set forth, he having so seen it set out, and had heard one *Henry Short* of the said parish, aged about three-score and ten years, *Elizabeth Leach*, wife of *John Leach*, aged at that time about seventy years, *James Turner*, occupier of an estate in the said parish, then aged about three-score, and *Jean Brown*, also an occupier of land in the said parish, then aged about forty years (all since dead) say, that the custom of setting out the tithe of milk was as before set forth, but could not recollect when they died, and that during the time of his setting out the tithe of milk to said *SHELDON*, he heard his mistresses frequently say, that such was the custom of setting it out as before, for that they had so taken it in, and so set out the same; one parson *PEN-DARVIS* having boarded with them, while rector of the said parish, for whom his mistresses had taken the tithe of milk in kind from one of the parishioners; and says that he does not know any particular instances of setting out tithes in kind of milk, save as aforesaid, and save what he had heard as aforesaid; but the custom of setting out the tithe of milk, as he believes, was continued by the defendants, but plaintiff refused to receive same, because the tenth meal of the whole herd of cows was not set out at one and the same time,

James Cartwright, aged three-score and three, says, That he knows the parties, is well acquainted with the said parish, and has so known it ever since his earliest remembrance, being, as he has been informed, brought to the said parish at eighteen weeks old, and that he had been acquainted with the custom of setting out tithes in kind of milk, by the occupiers of land within the said parish, upwards of
fifty

fifty years, and became acquainted therewith by means of being an apprentice to one *Pearce*, an occupier of lands, at which time S H E L D O N, the then rector, demanded tithes in kind of said *Pearce*, and all the other occupiers; and that *Pearce* at the time said, S H E L D O N demanded the tithes in kind, had four cows then in milk, "and that the tenth meal was constantly set out for, and generally fetched by said S H E L D O N, or by his servants, and that upon any new cow's coming to pail, said *Pearce*, or his servants, used to give notice of it to said S H E L D O N, or his servants, as the cow came in, whether morning or evening, and that said S H E L D O N used to fetch the tenth meal accordingly, whether morning or evening," and that he then heard and believed, that the same mode of setting out tithes in kind of milk, was observed by all the other occupiers, as his said master set out same during the time said S H E L D O N took the tithes in kind, which was about two or three years; and that his apprenticeship did not expire till after said S H E L D O N was again under composition for all tithes; and saith, that upon the tithes being first demanded and set out, an hole was made, by his master's orders, for throwing the parson's meal of milk into, in case he did not fetch same in season; and that he believes the other occupiers made holes in like manner; and that some times the tithes were fetched in time, and at other times were neglected, and then were thrown into such holes; and believes such neglect happened from said S H E L D O N's servants not being able to fetch same in proper time, and that such omission of fetching said tithes happened as well from the first setting out same before any new milch cows came into pail, as afterwards; "And that when the tithes were first de-
manded

manded to be set out in kind by said S HELDON, there was a meeting desired by the occupiers of land, to collect from the ancient people then living the general custom of setting out tithes in kind, and that he then heard from his said master, then between sixty and seventy years of age, his wife *Grace Pearce*, then about the same age, his own grandmother, *Agnes Cartwright*, then aged three-score years, and *James Turner*, then an occupier of lands within the said parish, and aged seventy years, and *Elizabeth* his wife, then about the same age, and *William Badever*, a labourer, then between sixty and seventy years of age, and *Mary* his wife, then about the same age, all living within the said parish, at many times say, that the ancient custom and manner of setting out and rendering tithes in kind of milk, was as before set forth ;” and particularly heard said *James Turner* say, that he had so set out and rendered his tithes in kind of milk to the said P E N D A R V I S, and likewise his said grandmother, who worked alternately with the said *James Turner*, and parson P E N D A R V I S say the same ; and that said P E N D A R V I S so received same from said *Turner*, and other occupiers of lands, but could not set forth the ages the said *Pearce*, his wife, *Cartwright*, *Turner* and wife, and *Badever* and wife, were of at their death ; but says, that all died many years ago ; and says, that at the time of his apprenticeship, his grandmother lived near the church at *Ditisham*, where he used to go, and that on *Sundays* he used to call on her, where he had frequently seen many of the occupiers of lands in said parish, and other old people of said parish, and heard them talking of the customs of the tithes of said parish ; and particularly of rendering the tithes of milk to be in manner set forth ; and says, that the only instance he has known of

of setting out tithes of milk in kind, within the said parish, was in SHELTON's time, when he was apprentice as aforesaid, and has receiving same from his said master during the space of three years; and has heard, that during the period said SHELTON received the tithe of milk in same manner of other occupiers as he did from his master; for that after that time said SHELTON to his death, and the two succeeding rectors, never took the tithes in kind, but always compounded for same, as did plaintiff, who succeeded the said Mr. MILLS for some time, but then took tithes in kind of defendants, but refused to take tithes of milk, agreeable to the custom before set forth.

Ann Tuby, widow, aged three-score and twelve years, says, she knows the parties, and has been acquainted with said parish from her infancy; that she has been acquainted with the custom of setting out tithes in kind of milk by the occupiers of lands within the said parish, and has so known it for many years, because the Reverend Mr. PLACE, rector of the said parish, died about the year 1723, who was in composition with the said parish to his death, and that SHELTON succeeded PLACE, who demanded the tithes in kind, at which time she worked for *Robert Loud*, otherwise *Cranford*, who at that time rented two farms within the said parish, and continued so to work for him all the time said SHELTON demanded the tithes in kind, which was about four or five years; " And that when SHELTON first demanded the tithes, the old people of the parish were examined by her uncle, and other occupiers of land, how the tithes used to be set out in their time, when such old people said, that the custom of rendering the tithes of milk in kind,

kind, had been to set out the tenth meal of milk for the rector of the whole herd ; and when a new cow calved, the tenth meal of milk (after such milk became fit for scalding) was set out for the rector, after giving notice to himself, or his servants to fetch it ; and remembered, that her uncle set out tithes in kind of milk for S H E L D O N, according to the above custom, having seen her uncle's servants, who milked the cows, so set it out ;" and that during the time the whole herd of cows were in milch, before a new cow came to pail, S H E L D O N's servants continued to fetch away the tenth meal, as set out ; but that after such new cow came in, he discontinued sending for the same, because he expected the tenth meal of the whole herd of cows to be set out at one and the same time, and not as they came to the pail, after calving ; notwithstanding which, the tenth meal of such new calved cows was set out for him, according to the custom aforesaid ; and particularly remembered at one time some of her uncle's family informed her uncle, that the tenth meal of a new calved cow was taken away, after being set out for the rector, by some unknown hand, on which her uncle ordered the future meals of the new milked cows to be put in a safer place for the rector ; " And says, That her uncle or his servants continued to set out the tithes of milk in kind of all his cows as they came to the pail, in such manner as before set forth, notwithstanding the rector discontinued sending for same ; and says, that she had lived with her aunt *Elizabeth Lyons*, in the said parish, from a child, until 1726, during which time she remembered her aunt, then about three-score and ten, declare to such parishoners as came to ask her about the custom of setting out the tithes in kind of milk, that the custom was as before set forth ; and also remembered

membered to have heard her grand-father, who had been occupier of land, then aged about four-score, and several other old persons; whose names she could not recollect, declare, that the custom of setting out the tithes in kind of milk, was as before set forth; and says, that her aunt and grand-father are both since dead, her aunt aged about three-score and twelve, and her grand-mother about four-score and ten years; and that she did not know any other instance of setting out tithes in kind of milk, arising within the said parish, in the time of SHELDON, (Mr. SNOW and Mr. MILLS, the two succeeding rectors, being in composition), and also except the present defendants setting out the tithes in kind of milk, which she believed they did according to the aforesaid custom, and has been informed, that the plaintiff took the tenth meal of the whole herd of cows when first set out by defendants, before any new cow came to the pail, but that afterwards he refused to send for the same.

Grace Holman, of *Tetness*, widow, aged three-score and nine years, says, she was born in *Dittisham*, and lived there with *Cranford*, otherwise *Loud*, from her birth, till he was about twenty-four years of age, when she went out of the parish, and had never lived there since; and that while she lived in *Dittisham*, her father occupied *Court Barton*, &c. in the said parish, and that the first rector she remembered, was one PLACE, who never took his tithes in kind, being under composition, and that at his death SHELDON succeeded him, and after being there, and continuing the composition, as his predecessor had done for one year, he demanded tithes in kind of all the occupiers, upon which her said father, for two or three years, or for some short time, set out the

tithes of milk of his cows then in milch by measure, throwing out the tenth part of every morning and evening's meal, for the use of the said SHELDON, which, not being fetched, was thrown away by her father or his servants; and that then her said father set out the tenth meal of his whole herd of cows then in milch, and threw some away before the said SHELDON provided vessels for receiving the same, and that he then provided vessels into which the tenth meal was put, and he used to fetch it away, leaving another vessel for the next tenth meal; "And that after any new cow came to the pail, her said father gave notice to the said SHELDON of the time when such cow came to the pail, as it happened, whether morning or evening, and that the tenth meal of such new cow was accordingly set out for the said SHELDON, and put in his vessels," which he would some times fetch, and at other times omitted to do; and when omitted to be fetched, her father ordered the same to be thrown away; and that she became acquainted with the custom of setting out tithes of milk, by her father's informing her, that he was advised so to do by Justice *Chalwick*, who was owner of the land her said father occupied; and says, she has heard and believes, that the occupiers of land in the said parish, during the said SHELDON's demanding the tithes in kind, set out the said tithes of milk, in the same manner as her father, and that said SHELDON, some short time before his death, compounded with her father and the other occupiers for their tithes; and that upon his death, the Reverend Mr. SNOW succeeded him, and continued a composition all the time she remained in the said parish, which was about five or six years.

Amy Wadland, widow, aged four-score and one, says, she knows the parties, and is acquainted with the parish, and hath known it ever since she was ten years of age; and that she became acquainted with the manner of setting out tithes in kind of milk by the occupiers of lands there, at the time S H E L D O N was rector, which was upwards of fifty years since, and when she lived as a servant with *George Roope*, after her apprenticeship, who used to set out the tenth meal of every cow after it came to the pail; whether morning or evening, after calving, on giving notice to S H E L D O N of the time of each cow's coming to the pail, so that he might fetch away the tenth meal thereof; and that he sometimes sent for it, and at other times did not; and that if he did not send for it in two hours after milking, they used to throw it away; and that her said master had above five milch cows, and that seldom or never the tenth meal of two cows came due to the said rectors together, and that the tithe of milk was so thrown out by different occupiers of lands in the said parish for about two or three years; but does not remember ever to have heard, or been informed by any person or persons then dead, any thing concerning the general custom of setting out tithes in kind of milk within the said parish, other than her said master and others setting out their tithes to the said S H E L D O N during the time aforesaid; and that she lived in the said parish from the age of ten years, until about twenty-three years ago.

The defendants likewise examined several other witnesses, to prove in general their having set out their tithes according to the custom insisted on by them, and that the *milk* had been sometimes fetched

away by the plaintiff's servants, and when not fetched in time, had been thrown away.

The cause came on to be heard before the barons of his Majesty's court of *Exchequer*, on *June 23, 1780*, when the court ordered and decreed, that it should be referred to the deputy remembrancer of that court to take an account of what was due from the defendants, for and in respect of the tithes in kind of milk arising from their respective cows by them kept within the said parish of *Dittisham*, during the time demanded by the plaintiff's amended bill; and also, that the defendants should pay to the plaintiff the costs of the said suit, to that time, to be taxed by the said deputy remembrancer.

See this cause on appeal, under Trinity Term, 22 Geo. III.

Hilary Term, 21 Geo. III.

January 29, A. D. 1781.

In the Exchequer.

Abraham Adams,

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Plaintiff.

*Henry Hewit, Samuel Hutchins,
James Rouse, Richard Hutchins,
Anthony Shailer, Henry
Hutchins, Thomas Badcock, John
Rubergall, William Combes, John
Brown, Joseph Kirke, John Jef-
fries, Daniel Grimwood, Robert
Shaw, and William Smith,*

Defendants.

The plaintiff's case taken from his case as respondent on the appeal to the Lords.

IN the year 1770, *James Waller*, doctor of divinity, was collated to, and instituted into the vicarage and parish-church of *Kensington*, in the county of *Middlesex*, and hath ever since been vicar thereof, and as such vicar, he became intitled (among other things) to the whole of the small tithes, and other vicarial dues, yearly arising within the said parish, or the titheable places thereof.

The vicar is intitled to the tithe of pines, melons, hot-house, green-house, or exotic plants, shrubs, trees, and roots, though purchased by the defendants, and though sold again without having made an increase in number.

Soon after the said *James Waller* was instituted into the said vicarage, he sent letters to several of the occupiers of garden and nursery grounds in the parish, requesting them to meet him for the purpose of

* See the appeal, under *Easter Term, 22 Geo. III.*

settling what money compositions should be paid him in lieu of the tithes in kind of such gardens and grounds, in consequence of which, meetings were had for that purpose, but no agreement having been made at any such meetings, the said *James Waller*, at *Michaelmas* 1771, proceeded to take the tithes in kind.

On 2 *October* 1771, the defendants *Henry Hewit*, *Samuel Hutchins*, *Joseph Kirke*, and one *Bernard Williamson*, and several other persons, occupiers of nursery grounds in the said parish, waited upon the said *James Waller*, when, after some altercation, it was agreed, that they should pay him a yearly composition of eight shillings and six-pence an acre for the tithes of the nursery grounds in their respective occupations, which composition was infinitely below their real value; no agreement in writing was entered into, nor was it expressed what continuance such agreement should have; *Doctor Waller* therefore concluded (and it hath been fully proved in the original and cross cause instituted on this occasion) that such agreement was to remain in force for one year only, and for such longer time as the said *Dr. Waller* and such occupiers should mutually think proper; and this composition of eight shilling and six-pence would probably have been accepted by *Dr. Waller*, during the whole of his incumbency, if the other parties to the agreement had continued to observe the terms of it; but in consequence of what is afterward stated, he was obliged, at *Michaelmas* 1777, to discontinue the same.

About *October* 1771, a meeting was had between *Dr. Waller* and *Henry Hutchins*, and several persons, occupiers of garden grounds in *Kensington*, and (among

mong others) the defendants in the original cause, at which meeting it was agreed between the said *Henry Hutchins* and *Dr. Waller*, that six shillings an acre should be paid as a composition for the tithes of garden grounds, in lieu of tithes in kind, and it was then agreed, or understood, (as has been proved in the original cause) that such agreement as should be finally entered into by the said *Henry Hutchins* with the said *Dr. Waller* should be binding upon the occupiers of nursery grounds as to its duration.

At the time these agreements were entered into by the nursery men and gardeners, it was fully understood by them and *Dr. Waller*, that an usage had obtained in the time of *Dr. Waller's* predecessors, and as far as can be traced back by the parish books, in settling the terms of compositions for the tithes of nursery and garden grounds for the occupiers thereof, from time to time, whenever the vicar was rated for such tithes towards the maintenance of the poor, to pay the sums so assessed upon him, and *Dr. Waller* agreed to give up the fees customarily due for burying the poor.

In consequence of this, *Dr. Waller*, being desirous that this agreement should be permanent (although the composition of six shillings an acre was infinitely below the real yearly value of the tithes compounded for, as has been fully proved) prepared two parts of an agreement in the words and figures following, viz.

“ *Kensington, January 17, 1772.*

Mem. It is agreed this day between *James Waller*, vicar of the parish of *Kensington*, and, *Henry Hutchins* of the said parish as follows :

The said *James Waller* agrees to let from *Michaelmas* 1771, and so long as he shall continue vicar of the said parish, all the tithes, whether rectorial, with which he is endowed, or vicarial, to the said *Henry Hutchins*, of one hundred and sixteen acres and one half of land, which the said *Henry Hutchins* now occupies in the said parish, at and under the yearly rent of thirty-four pounds and nineteen shillings, payable quarterly, at the usual days of quarterly payments; provided that if the present mode of cultivation shall be altered, that then this agreement shall be void; but so long as the said land shall continue in its present state, and so long as the said *James Waller* shall continue vicar of the said parish of *Kensington*, and *Henry Hutchins* occupier of the said lands, this agreement shall be binding on each party, and shall be preparatory to a lease between the said parties. In witness whereof the said parties to two parts of this agreement have interchangeably set their hands this day and year above-mentioned,

Witness,

JAMES WALLER."

The above proviso for vacating the agreement in case the mode of cultivation should be altered, was thought reasonable, inasmuch as it might happen, that the garden grounds might be converted into nursery grounds, which is not unusual; and in case that rate of composition by the acre agreed for with the nursery gardeners, being eight shillings and six-pence, it is obvious, that the vicar ought not to be compelled to accept the composition of six shillings by the acre.

Dr. *Waller* signed both parts of this agreement, and gave the same to *Edward Cooper*, his tithe collect-

or,

er, desiring him to carry them to the said *Henry Hutchins*, in order that he might sign them, which the said *Edward Cooper* did; but the said *Henry Hutchins*, after he had read one part over (which he improperly and clandestinely retained) told *Cooper*, that the doctor was too arbitrary, and that he would not sign an agreement for more than one year; in consequence of which declaration, another agreement was drawn in the words and figures following, viz.

“ *Kensington, January 23, 1772.*

“ *Mem.* It is agreed this day between *James Waller*, vicar of the parish of *Kensington*, and *Henry Hutchins* of the said parish, as follows, the said *James Waller* agrees to let from *Michaelmas* 1771, to *Michaelmas* 1772, all the tithes, whether rectorial, with which he is endowed, or vicarial, to the said *Henry Hutchins*, of one hundred sixteen acres and one half of land, which the said *Henry Hutchins* now occupies in the said parish, at and under the yearly rent of thirty-four pounds and nineteen shillings, payable within thirty days after *Michaelmas* 1772. In witness whereof the said parties to two parts of this agreement, have interchangeably set their hands this day and year above mentioned.”

The above rent is after the rate of six shillings an acre.

Two parts of this agreement having been signed by *Dr. Waller*, were also given to the said *Edward Cooper*, for such purpose as aforesaid; and the said *Henry Hutchins* having fully approved thereof and refused to execute any agreement for more than one year,

year, signed both parts, one of which he retained in his own custody, and the other was returned to Dr. *Waller*; *Hutchins* afterwards paid the said composition or rent for his tithes, from *Michaelmas* 1771, to *Michaelmas* 1772, according to the terms of the said agreement; and neither party, for some time, objecting to those terms, the said *Henry Hutchins* continued to compound for his tithes, upon the same terms, till *Michaelmas* 1777, and all the other occupiers of garden ground who had agreed to compound for their tithes at the same rate *by the acre*, and upon the same terms, as should be finally settled by *Henry Hutchins* with respect to his, accordingly paid a like composition *by the acre*, for the tithes of their respective grounds, till about the month of *August* 1777.

In the month of *August*, 1777, the nurserymen and gardeners thought proper to procure Dr. *Waller* to be assessed to the maintenance of the poor in respect of his tithes, and, contrary to the former usage and faith of the agreement, insisted, that the doctor himself should pay such rate, which obliged him to resolve either to advance the composition so as to reimburse himself the charge which they had used to pay, or to take the tithes in kind; and thereupon a meeting between him and the occupiers was held, when there was present the defendant *Samuel Hutchins*, and the said *Bernard Williamson*, *Richard Hutchins* and *Matthew Emerson*, with several other persons; at which time Dr. *Waller*, being anxious to preserve the peace of the parish, proposed to let to any such six or more of such occupiers as he should fix upon, the whole of the tithes of that part of the parish, in which the gardens and nursery grounds (respecting the tithes of which such controversy then subsisted) are situate, for such sum of money, as it shall appear by his books,

he

he had before annually received from such occupiers, upon their undertaking to pay the vicar's poors rates in respect of such tithes, to which proposal they did not agree; and having informed Dr. *Waller* that he was at liberty to let such tithes to any other person who should take them in kind, and that they were determined to give all the trouble they could to any person who should take them, they all left him without coming to any terms.

In about three weeks after the last meeting, *Benjamin Bryon*, and *John Rubergall*, two of the said occupiers, applied to Dr. *Waller*, and offered to take the said tithes, but did not finally agree to do, though the said *Benjamin Bryon*, on the same day, waited a second time upon Dr. *Waller*, and then agreed to take a lease of the said tithes, in manner, and upon the terms, herein-after mentioned.

That Dr. *Waller* on 9 December, 1777, caused to be delivered to the defendants *Hewitt*, *Samuel Hutchins*, *Kirk*, *Jeffries*, *Grimwood*, and *Shaw*, and on the same day caused to be delivered to the said *Barnard Williamson*, a nursery man in the parish of *Kensington*, and in partnership with the said defendant *Brown*, and to several other occupiers of nursery grounds, and garden grounds in the said parish, a notice in writing, signed by him, dated the eighth day of the said month of *September*, in the words and figures following, viz.

“ *Kensington*, September 8, 1777.

“ Please to take notice, that the composition

“ for the tithes of land in your occupation,

“ will determine on *Michaelmas-day*, now

“ next ensuing; and that I have let such

“ tithes

“ tithes to Mr. *Benjamin Bryon* from that
 “ day, to whom you are hereby desired to
 “ account for the same.

“ JAMES WALLER, vicar.”

The said *Benjamin Bryon* also, between the *twentieth* and *twenty-seventh* days of the month of *September*, caused to be delivered to all the last named defendants, and also to the said *Barnard Williamson*, and the other occupiers of nursery and garden grounds respectively, a notice addressed to them, in the words and figures following, *viz.*

“ Please to take notice, that I shall take the
 “ tithes in kind for the land you hold in the
 “ parish of *Kensington*, in the county of *Mid-*
 “ *dlesex*, from *Michaelmas-day* next ensuing
 “ the date hereof ;

I am

Your humble servant,

Benjamin Bryon.”

Earl's court, 10 Sept. 1777.

That by indenture of lease dated 27 *September*, 1777, made between the said *James Waller* of the one part, and the said *Benjamin Bryon* of the other part, the said *James Waller*, for the considerations therein mentioned, demised unto the said *Benjamin Bryon*, all the tithes and tenths of corn, grain, hay, wool, lamb, milk, eggs, fruits of trees, hemp, flax, and honey, and all other tithes whatsoever, and of what nature or kind soever, yearly arising, growing, increasing, or becoming due and payable within that part of the parish of *Kensington*, which lies on the south side of the King's highway, leading from
Hyde-

Hyde-park-corner to *Counter's Bridge*; and all the titheable places within such part of the said parish, which belonged to the said *James Waller*, as vicar of the said parish, TO HOLD unto the said *Benjamin Bryon* his executors, administrators, and assigns, from *Michaelmas* 1777, for six years, at the yearly rent of two hundred and eighty * pounds, to be paid half yearly, as therein mentioned.

That the nursery men and gardeners having refused to set their tithes out, pursuant to the notices received, or to make the said *Bryon* an adequate compensation for the same, the plaintiff, in order to prevent disputes in the parish, called a meeting of the occupiers of nursery and garden grounds, with a view to settle terms of composition for their tithes, between them and *Bryon*, but without effect, after which the plaintiff agreed with *Bryon* for an assignment of the lease to be made to him by *Dr. Waller*, and to pay *Bryon*, for his interest under the same, sixty guineas a year more than the rent reserved.

Of this agreement the plaintiff soon afterwards informed the said occupiers, and desired them to meet him at a place in the parish which he mentioned to them, proposing that every occupier should retain their own tithes, upon payment of a composition, after such a rate as would make the amount of all the compositions to be paid, equal to the annual sum he had contracted to pay *Bryon*; the plaintiff accordingly attended at such place to receive the occupiers, and settle terms with them, but none

* This rent of two hundred and eighty pounds a year, agreed to be given by *Bryon*, is more by upwards of forty pounds than what the Doctor had been accustomed to receive under the old composition.

of the occupiers came except one, who held about four acres, and with whom the plaintiff agreed upon a composition, calculated for the rate before mentioned.

The plaintiff on 27 September, 1777, delivered to each of the said last above-mentioned defendants and occupiers, a notice in writing, signed by him, in the words following; viz.

“ S I R,

“ Having taken your tithe of Mr. *Bryon*, I
 “ hereby give you notice not to move any of
 “ your crops after *Michaelmas-day* next en-
 “ suing the date hereof, without giving notice,
 “ that the same may be properly tithed; and
 “ for your conveniency, I will accept of no-
 “ tice sent for me at Mr. *Bryon's* house in
 “ *Earl's* court, for to come and tithe the same;

I am,

Yours, &c.

27 Sept. 1777.

Abraham Adams.”

By indenture dated 24 March, 1778, made between the said *Benjamin Bryon*, of the one part, and the plaintiff, of the other part, the said *Benjamin Bryon* (after reciting the said indenture of lease) did, for the considerations therein mentioned, assign unto the plaintiff the said tithes, and all and singular the premises in the indenture of lease, T O H O L D the same unto the plaintiff for the remainder of the said term of six years, subject to the payment of the rent and performance of the covenants and conditions therein contained.

The defendants last above-mentioned refusing to set out their tithes in kind, or to make a reasonable

satisfaction for the same, although they never had, during the whole time they had paid their compositions, nor at any of the said meetings, or at any other time till the present suits were instituted, pretended that they were justified under any agreement, in not rendering the same in kind, but, on the contrary, had uniformly, till the present suits, insisted that the agreements respecting such compositions, were to bind only so long as both parties should think proper, the plaintiff, in *Easter Term*, 1778, filed his original bill in the court of *Exchequer*, against the defendants *Henry Hewit*, and *Samuel Hutchins*, and also against *James Rouse*, *Richard Hutchins*, *Anthony Shailer*, *Henry Hutchins*, *Thomas Badcock*, *John Rubergall*, and *William Combes*, which said bill was afterwards amended, by virtue of an order of the said court, dated 17 *May*, 1779, and the defendants *John Brown*, *Joseph Kirk*, *John Jefferies*, *Daniel Grimwood*, and *Robert Shaw*, were added parties thereto, stating, by the said amended bill amongst other things, the agreements, leases, assignments, and notices before mentioned, and that the defendants before *Michaelmas* 1777, and ever since, were occupiers of certain nursery gardens, or quantities of nursery and garden grounds, within that part of the said parish of *Kensington*, the tithes whereof were demised to the said *Benjamin Bryon*, and had had, and taken therefrom, among several other species of titheable matters in the said original bill charged, divers quantities of trees, shrubs, fruits, herbs, greens, and various other kind of garden stuffs, plants, roots, flowers for sale, pines, melons, grapes, hot-house plants, and flower roots, the tithes whereof belonged to the plaintiff as assignee, as aforesaid, all which they had subtracted and withheld from the plaintiff, and praying that the defendants respectively might be com-

compelled to come to a just account with the plaintiff for the single value of the tithes of all the titheable matters, which they respectively, since 24 *March*, 1778, had had and taken from the lands in the said parish, in their respective occupations, and might pay plaintiff what should appear to be due on taking such account, the plaintiff waving all penalties, &c.

In *December*, 1778, the defendants *Henry Hewitt* and *Samuel Hutchins*, and six others of the defendants in the bill named, by their answer to the plaintiff's original bill, admitted, that the said *James Waller* was presented and instituted into the said vicarage and parish church, and that as such vicar, he, or his lessee or farmer, was intitled to the tithes of corn, grain, and hay, and to all the vicarial and small tithes, yearly arising in that part of the parish herein before mentioned, and particularly to the tithe of wool, lamb, milk, eggs, fruit, herbs, garden-stuff, plants, flowers raised for sale, hemp, flax and honey, or a satisfaction for the same; and also admitted the notices delivered to them, by the said *James Waller*, *Benjamin Bryon*, and the plaintiff, as herein before mentioned, and that they were, during the time herein before mentioned, occupiers of certain nursery ground, garden ground, and other land within the said parish, and had had and taken divers titheable matters therefrom; and further stated, that the said *James Waller* having in the year 1771, been desirous of raising the composition thencefore paid for the said tithes to ten shillings an acre, divers meetings were had between him and the occupiers of nursery grounds in the said parish, and particularly that on 2 *October* 1771, the defendants *Hewitt*, *S. Hutchins*, *Kirks*, and one *Williamson*, who, together with the defendant *Jefferies*, *Grimwood*, and *Shaw*, were the only occupiers of nursery

nursery grounds in the said parish, went, on the behalf of themselves and the nursery men of the said parish, to the said *James Waller*, and the defendant *Henry Hewitt* then paid the said *James Waller* one year's tithes at the old rate of six shillings by the acre, up to *Michaelmas* 1771, and that the said *James Waller* then gave *Hewitt* a bill and receipt as follows,

Mr. *Hewitt's* ground, all nursery, the *Griffins* twelve acres, three roods, sixteen perches; new ground near Mr. *Smith's* house, two acres, one rood, sixteen perches; a ground where Mr. *H. Hewitt's* stand, two acres, twenty-seven perches; *Taylor's* three acres, three roods, and thirteen perches; twenty-one acres, thirty-two perches, six pounds, six shillings. Received of Mr. *H. Hewitt* this 2 October 1771, the above sum in full of all matters that became payable from the land in his and company's occupation, in the

parish of *Kensington*; $\frac{21}{12}$ deducted; six shil-

lings and one half-penny overcharged for Mr. *Smith's* ground; agreed for eight shillings and six-pence an acre for every year hereafter."

And that, after some conversation between them about the composition to be paid in future, Dr. *Waller* insisted on ten shillings an acre for the future; but that they refusing to pay the same, it was at last agreed between them and the said *James Waller*, that the composition for the tithes of all nursery grounds in the said parish should for the future, during the incumbency of the said *James Waller*, be at the rate of eight shillings and six-pence an acre; and they thereby further stated, that the said *Samuel Hutchins,*

Williamson, and *Kirk*, then left the said *James Waller*, and *Henry Hewitt* stayed behind, and informed the said *James Waller* he thought it necessary some memorandum should be made of such agreement; whereupon the said *James Waller* wrote under the receipt he had given to the said *Hewitt* as aforesaid, as follows; “*Agreed for eight shillings and eight pence an acre, for every year hereafter.*”

And the said defendants insisted that *Hewitt* considered the same as a permanent agreement between the said *James Waller*, and the said other defendants *Hewitt*, *Hutchins*, *Jefferies*, *Grimwood*, and *Shaw*, on behalf of themselves, and all other nursery men within the said parish, and that the said agreement was to continue during the incumbency of the said *James Waller*; and further that said *Hewitt* paid his composition for tithes at the rate aforesaid, up to *Michaelmas*, 1772, and that the said *James Waller* gave him a bill and receipt, therein expressing that the said tithes were paid up to *Michaelmas*, 1772, as by agreement.

And the said *Samuel Hutchins* by the said answer further stated, that on 16 *December*, 1772, he paid the Doctor the composition for his tithes up to *Michaelmas* 1772, at which time *Dr. Waller* gave him a bill and receipt, wrote and signed as follows, viz.

Mr. *Samuel Hutchins*, debtor to the Rev. Mr. *Waller*, on account of tithes, due at *Michaelmas*, 1772.

To sixteen acres, one rood, nursery
ground, at eight shillings and six-pence } *£. s. d.*
an acre, as by agreement } 6 18 1½

To ten acres corn land, &c. on the
south side of *Kensington* parish, at six shil- }
lings an acre as by agreement, } 3 00 0

9 18 1½
Received

Received this 16 *December*, 1772, the above contents, by me,

James Waller.

And that ever since the giving said receipt, he paid up to *Michaelmas* 1777, eight shillings and sixpence *by the acre*, for the nursery ground, and therefore insisted on the same as a lease for the term of the said *James Waller's* incumbency, as he submitted the said agreement had, by such payments, been carried into execution on his part.

December 13, 1779, the defendants *Hewitt, S. Hutchins, Browne, Kirke, Jefferies, Grimwood, and Shaw*, by their answer to the plaintiff's amended bill, admitted, that the vicar is intitled to the tithe of fruit and flowers raised for sale; but say they do not conceive that the vicar of the said parish for the time being, is intitled to the tithes of pinés, melons, hothouse plants, greenhouse plants, or of any plants or roots growing in hothouses, or of any exotics growing within the said parish, or to the tithes of any plants or trees inoculated or grafted, or of any plants, shrubs, trees, or roots, which are purchased and planted in their nursery or garden grounds, and from thence sold out again, without having made any increase in number; and the said defendants admitted, that, during the time mentioned in the plaintiff's bill, they respectively occupied certain lands and grounds in the said parish, and had had and taken divers large quantities of titheable matters therefrom; and the defendants *Grimwood, Shawe, Kirke, Jefferies, and Brown*, insisted on the benefit of the agreement mentioned in the answer of *Hewitt and Hutchins* to the plaintiff's original bill mentioned; and that the same had been entered into

by them with the said *James Waller*, on behalf of themselves, and all other the occupiers of nursery grounds in the said parish, and insisted that the said *Benjamin Bryon* and the plaintiff, before they took the lease of the said tithes of the said *James Waller*, had full notice of the said agreement, and the said defendants, *Hewitt, S. Hutchins, Brown, Kirke, Jefferies, Grimwood* and *Shaw*, admit that they refuse to set out the said tithes in kind.

And they further insist, that in case the said *James Waller* had any right to determine the said composition, the several notices mentioned to have been given for determining the same, and taking the tithes in kind, were short and insufficient notices, considering the crops to be tithed by the plaintiff.

In *Easter Term*, 1778, the defendants, *Henry Hewitt, John Brown*, and *Samuel Hutchins*, together with *William Smith, Barnard Williamson, Anthony Shailer, J. Rowse Richard Hutchins, Henry Hutchins, John Rubergall*, and *William Combes*, filed their original bill in the said court of *Exchequer*, against the said *James Waller, Benjamin Bryon*, and the plaintiff, which was afterwards amended pursuant to an order of the said court, dated 22 *February* 1779, stating by their said original bill, as far as relates to the said defendants *Henry Hewitt, Samuel Hutchins, John Brown, Joseph Kirke, John Jefferies, Daniel Grimwood*, and *Robert Shaw*, and the agreement which they insisted upon permanent as to the effect set forth in the answers above mentioned; and praying that the said *James Waller* may be decreed to accept the annual sum of eight shillings and six-pence an acre, as a composition for the said tithes of nursery grounds, and to perform the said agreement so entered into by him with the plaintiff as aforesaid, and

indemnify

indemnify plaintiff from the claims of *Bryon* and *Adams*, on account of the said tithes, they being willing to pay what, if any thing, is due to the said *James Waller*, as a composition for the said tithes, at the rate aforesaid.

The said *James Waller*, *Benjamin Bryon*, and the plaintiff, having put in their answers to the said bill, and the said cause being at issue, many witnesses were examined on both sides, in each of the said causes.

On 29 *January*, 1781, after three days hearing, a decree was pronounced, whereby it is ordered, adjudged, and decreed, that it be referred to *Francis Ingram*, Esq; the deputy to his Majesty's remembrancer of the said court, to take an account of what is due to the said plaintiff *Abraham Adams*, from the said defendants, for all the tithes in kind demanded by the said plaintiff in his said bill, in the taking of which account the said deputy remembrancer is to make to all parties all just allowances, and all parties are to produce before, and leave with the said deputy remembrancer, on oath, all books, papers, and writings, in their custody or power, relating thereto, and are to be examined on interrogatories, as the said deputy shall direct, and if any special matter shall arise in taking the said account, the said deputy is to be at liberty to state the same to the court, as he shall think proper; and the said deputy remembrancer is to make his report herein with all convenient speed; and it is further ordered, adjudged, and decreed, that the said defendants in the said original cause, do pay to the plaintiff his costs of the said suit to this time; and it is referred to the said deputy remembrancer to tax the said

costs; and the said original cause is to be continued in the paper of causes, to be further heard upon the coming in of the said deputy remembrancer's said report, until which time the consideration of subsequent costs, and all further directions are reserved; and it is further ordered, adjudged, and decreed, that the cross bill be dismissed with costs, to be taxed for the said several defendants in the said cause, by the said deputy remembrancer; and it is referred to the said deputy remembrancer to tax the said last mentioned costs.

The case of the defendants taken from their case as appellants, on their appeal.

In the year 1770, the Reverend Doctor *James Waller* was presented to the vicarage of *Kensington*, then vacant by the death of Dr. *Fortin*, and hath ever since been vicar of the said parish.

For many years before, and until the death of Dr. *Fortin*, the occupiers of nursery grounds, in the said parish, paid an annual composition for the tithes of their said nursery grounds, after the rate of six shillings an acre; and Dr. *Waller* having, soon after his induction, signified an intention of raising such annual composition, and having for that purpose caused all the nursery grounds in the said parish to be accurately measured, several meetings were afterwards had between the said Dr. *Waller* and the occupiers of such nursery grounds, concerning the annual composition to be paid by them in future for their said tithes; and particularly on 2 October 1771, the defendants *Hewitt*, *Samuel Hutchins*, and *Kirke*, together with *Bernard Williamson*, went to Dr. *Waller's* house, to treat with him on the subject of such composition,

composition, when after much conversation it was agreed between them, that the annual composition, to be paid in lieu of the tithes of all the nursery grounds within the said parish, should from *Michaelmas* 1771, for every year thereafter, so long as Dr. *Waller* should continue vicar or incumbent of the said vicarage, be after the rate of eight shillings and six-pence *an acre*, according to such admeasurement; and the defendants *Hewitt*, *S. Hutchins*, *Browne*, *Kirke*, *Jefferies*, *Grimwood*, and *Shaw*, from that time to *Michaelmas* 1777, inclusive, regularly paid to Dr. *Waller* the composition for their said tithes, according to such agreement.

Notwithstanding the above agreement, Dr. *Waller*, on 12 September 1777, caused all the defendants (except the defendants, *Rouse*, *R. Hutchins*, *Shailer*, *Henry Hutchins*, *Badcock*, *Rubergall*, *Combes* and *Browne*) to be severally served with notices of the date and purport following, *viz.*

“ *Kensington*, September 8, 1777.

Please to take notice, that the composition to be paid for the tithes of land in your occupation, will determine on *Michaelmas-day* now next ensuing, and that I have let such tithes to Mr. *Benjamin Bryon* from that day, to whom you are hereby desired to account for the same.

JAMES WALLER, Vicar.”

And the said *Benjamin Bryon*, sometime between the twentieth and twenty-seventh days of the same month of September, caused the defendants *Henry Hewitt*, *Samuel Hutchins*, *James Rouse*, *Richard Hutchins*, *Anthony Shailer*, *Henry Hutchins*, *Thomas Badcock*, *John Rubergall*, *William Combes*, *Daniel Grimwood*, and

Robert Shawe, to be severally served with notices of the date and purport following, viz.

“ Please to take notice, that I shall take the tithes in kind, for the lands you hold in the parish of *Kensington*, in the county of *Middlesex*, from *Michaelmas-day* next ensuing after the date hereof.

I am

Your humble servant,

Earl's Court, 10 Sept. 1777: *Benjamin Bryon.*”

And the plaintiff, on *Michaelmas day* 1777, also caused all the defendants (except *Rouje*, *R. Hutchins*, *Shailer*, *H. Hutchins*, *Badcock*, *Rubergall*, *Conbes*, and *Browne*) to be severally served with notices of the date and purport following, viz.

“ Having taken the tithes of *Mr. Bryon*, I hereby give you notice, not to move any of your crops, after *Michaelmas-day* next ensuing the date hereof, without giving notice, that the same may be properly tithed, and for your convenience, I will accept of notice sent [*left*, J. R.] for me at *Mr. Bryon's house*, at *Earl's Court*, for to come and tithe the same.

I am,

Your's, &c.

Sept. 27, 1777.

Abraham Adams.”

And the plaintiff afterwards caused other notices to be served upon the said defendants *Henry Hewitt*, *Samuel Hutchins*, *John Browns*, *Joseph Kirke*, *John Jefferies*, *Daniel Grimwood*, and *Robert Shawe*; of the date and purport following, viz.

“ *London*,

“ *London, May 4, 1778.*

“ Having heretofore given you notice of my intention to take the tithes in kind, and that I had appointed and do appoint Mr. *Benjamin Bryon* of *Earl's Court*, to collect the same of that part of the parish of *Kensington* that I hold from Mr. *Bryon* and Mr. *Waller*, I hereby give you further notice, that if you chuse to come to any reasonable terms of composition for the present year, as from *Michaelmas 1777*, to *Michaelmas 1778*, and signify the same to me in writing, six days from the date hereof, I am ready to treat with you, otherwise I shall proceed according to law.

No. 1, *Upper Berkeley-street,*
Portman-square.

Your's &c.

Abraham Adams.”

• The said last above named defendants conceiving that Dr. *Waller* was bound to keep his before mentioned promise, neglected to set out their tithes pursuant to such notices, whereupon the plaintiff, in *Easter Term 1778*, exhibited his original bill in the court of *Exchequer* against the defendants *Hewitt* and *S. Hutchins* and several other persons (which bill was afterwards amended pursuant to an order of the said court, dated 17 *May 1779*, and the defendants *Browne*, *Kirke*, *Jefferies*, *Grimwood* and *Shawe*, and also *William Smith* were added parties thereto) stating, amongst other things, that the parish of *Kensington* consisted of a rectory and vicarage, and that the vicar thereof was intitled (*inter alia*) to the whole of the small tithes arising within the said parish, and particularly to the tithes of wool, lamb, milk, eggs, fruit, herbs, greens, cabbages, potatoes, turnips, and other garden stuff; plants, and flowers raised for sale; pines, melons, grapes, hot-house plants, flowers, roots, hemp, flax, and honey.

“ That

“ That the said *Dr. Waller* was, about the year 1770, collated to and inducted into the said vicarage, and was then vicar thereof, and as such, he or his lessee was intitled to the tithes of the several titheable matters aforesaid, yearly arising within the said parish.

That *Dr. Waller*, shortly before 8 September 1777, agreed to let the tithes of that part of the said parish, which lies on the south side of the King's highway, leading from *Hyde-park corner* to *Counter's Bridge*, and which consisted chiefly of nursery and garden grounds, to the said *Benjamin Bryon*, and in consequence of such agreement, on or about 12 September 1777, gave the defendants *Hewitt*, *S. Hutchins*, *Browne*, *Kirke*, *Jefferies*, *Grimwood*, and *Shaw*, and others, occupiers of nurseries, gardens, and lands, in that part of the said parish, such notice as is herein before set forth.

That the said *Benjamin Bryon*, between 20 and 27 of same September, gave to said last above named defendants and others, occupiers of such lands, as is also herein before set forth.

That *Dr. Waller* by indenture, dated on or about 27 of the same September, demised unto the said *Benjamin Bryon*, his executors, administrators, and assigns, from Michaelmas 1777, for the term of six years, all his said tithes, at the yearly rent of two hundred and eighty pounds.

That the plaintiff having soon afterwards agreed with the said *Benjamin Bryon* for an assignment of such lease, for the consideration of sixty-three pounds a year, he, about 27 of same September, gave to the said

said last above mentioned defendants and others, occupiers of such lands, such notice as is also herein before set forth, and that having executed a bond to the said *Benjamin Bryon* for payment of the said yearly sum of sixty-three pounds, the said *Benjamin Bryon*, by indenture dated on or about 24 *March* 1778, assigned unto the plaintiff, his executors, administrators, and assigns, the said indenture of lease, and and all his estate and interest therein, subject to the payment of the rent and performance of the covenants therein contained; and the said bill further stated, that the said last above named defendants, from before *Michaelmas* 1777, and ever since, had respectively held and occupied divers parcels of land, and particularly nurseries and gardens, within the before mentioned part of the said parish, and had respectively had and taken therefrom divers quantities of trees, shrubs, fruits, herbs, greens, cabbages, collards, potatoes, turnips, and various other kinds of garden stuff, plants, roots, flowers for sale, pines, melons, grapes, hot-house plants, and flower roots of various kinds, hemp, and flax; and had also divers other titheable matters from the said lands respectively, the tithes of which were accounted small tithes; and that the tithes of the said matters and things ought to have been set out for the plaintiff, as assignee as aforesaid, but that the said last above named defendants had refused to set them out for him, or to make him any satisfaction for the same, pretending that Dr. *Waller* had entered into such agreement for a composition for the tithes of their nursery grounds, as is herein before mentioned; whereas the plaintiff by his said bill insisted, that the said Dr. *Waller* never made any agreement with the said defendants, or, if he did, that the same was not reduced into writing, and was only for one year, and for

such

such longer time as he and they with whom he so agreed should chuse to continue them, and that therefore the same was determined by the aforesaid notices, the said bill therefore prayed, as against the said defendants, last above mentioned, that they might be compelled to account with him for the value of the tithes of all the titheable matters, which they had respectively taken from their lands in the said parish since 24 *March* 1778, and might pay him what should appear to be coming due on such account.

Such of the defendants as were parties to the original bill, put in their answers thereto, on 12 *December* 1778, and such of them as were afterwards made defendants, together with the former defendants, put in their answer to the said amended bill on 13 *December* 1779, and thereby admitted the right of the vicar of the said parish, to the tithes of many of the titheable matters demanded by the said bill; *but submitted*, that the said vicar was *not entitled to the tithes of pines, melons, hot-house plants, green-house plants, or of any plants or roots growing or planted in hot-houses or green-houses, or of any exotics, or of any plants, shrubs, trees, or roots, which are purchased or planted in their nurseries, and from thence sold out again, without having made any increase in number*; they also admit the presentation of the said *Dr. Waller*, and his right to the tithes of the titheable matters, arising within the said parish, but say they know nothing of the transactions in the said bill mentioned to have taken place between the said *Dr. Waller*, *Benjamin Bryon*, and the plaintiff, respecting the lease and assignment thereof in the bill mentioned, but admit the several notices having been given, in manner first herein before set forth; they also severally set forth an account of

of the number of acres of land occupied by them in the before mentioned part of the said parish, during the time enquired after by the bill, and in what manner the same had been cropped and used; they therefore set forth the controversy between them and the said Dr. *Waller*, respecting the composition to be paid for their lands, in the said parish, and the agreement relating thereto, made with the said Dr. *Waller*, as herein before set forth; and that as evidence of such agreement having been so made, the said Dr. *Waller* had at different times, when the said defendants last above mentioned had paid him their compositions, at the before mentioned rate, signed *memorandums* in writing, under several of the receipts, which he gave to them for such compositions, signifying that he had agreed for eight shilling and six-pence an acre, as by agreement.

And they *insisted*, that in case Dr. *Waller* had any right to determine the compositions in the manner in which he had attempted to determine them, that the *several notices* in the said bill mentioned to have been given for determining such compositions, and for taking the tithes in kind, were *short and insufficient* notices, considering the nature of the crops to be tithed.

Pending these proceedings the defendants filed their original [*a cross*, J. R.] bill in the said court of *Exchequer*, against the said Dr. *Waller*, Benjamin Bryon, and the plaintiff, which was afterwards amended, pursuant to an order of the same court, setting forth and insisting upon the several matters set forth and insisted upon in their said several answers to the plaintiff's bill, and praying that Dr. *Waller* might be decreed to accept such compositions from them respectively, and might indemnify them against

against the claims of the other defendants *Benjamin Bryon* and the plaintiff, and that the last named defendants might be restrained from taking their tithes in kind.

The said Dr. *Waller*, *Benjamin Bryon*, and the plaintiff severally put in their answers to the said bill, and the said *James Waller*, by his answer, admits the several meetings to have been held as herein before set forth, and that he had at such meetings agreed to take such compositions as herein before mentioned, but said, that he meant to accept such compositions for a year certain, and for such longer time as he should think proper, though not for any longer time, but that he never agreed that such compositions should continue as long as he should continue vicar, though he admits, that he has every year from *Michaelmas 1771*, to *Michaelmas 1777*, inclusive, received such several compositions; and the said *James Waller* further stated his agreement with *Benjamin Bryon*, and his having given him a lease, and his having given such notices to the defendants *Hewitt*, *S. Hutchins*, *Browne*, *Kirke*, *Jefferies*, *Grimwood*, and *Shawe*, at the times, and in the manner respectively mentioned in the plaintiff's bill; the said *Benjamin Bryon* by his answer, stated his agreement with *Waller* to take the tithes, and his having got such lease thereof executed to him, and his having given such notices to the said last above named defendants, and his agreement and assignment to the plaintiff, at the several times and in manner respectively mentioned in the plaintiff's bill, and admits that before he so agreed with *Waller*, he had heard of such agreements between *Waller* and the said last above named defendants.

The

The plaintiff, by his answer, stated his agreement with *Bryon* for an assignment of the said lease, and his having given such notices to the said last above named defendants, and *Bryon's* having executed to him such assignments, at the several times and in manner respectively mentioned in the plaintiff's bill, and admits, that *before he so agreed with Bryon*, he had heard of such agreements between *Waller* and the last above named defendants.

Issue having been joined on both the said causes, and several witnesses examined on each side, the same came on to be heard before the barons of the said court of *Exchequer*, on 29 January 1781; when it was ordered and decreed, that it should be referred to the deputy remembrancer of the said court, to take an account of what was due to the plaintiff from the said last above named defendants, for all the tithes in kind demanded by him, in his said bill, and the usual directions were given for taking the account, and that all the defendants in the original cause should pay to the plaintiff his costs of the said suit to that time, to be taxed by the said deputy remembrancer; and it was further ordered, that the said cross bill should be dismissed with costs, to be taxed for the several defendants in the said cause.

For the appeal, see under Easter Term, 22 Geo. III.

Easter Term, - 22 Geo. III.

April 19, A. D. 1782.

In the House of Lords.

Henry Hewitt, Samuel Hutchins,	} Appellants.
John Browne, Joseph Kirke,	
John Jefferies, Daniel Grim-	
wood, and Robert Shawe, all of	
the Parish of Kensington, Nur-	
serymen.	

Abraham Adams, — Respondent.

*The Appellants * Case.*

Notice given on September 6, to determine a composition for tithes from year to year, such years commencing September 29, held by the judges in the Lords to be by no means a sufficient notice.

THE appellants conceiving themselves to be aggrieved by the decree of the court of *Exchequer*, [which see under *Hilary Term*, 21 *Geo. III.*] appealed to the Lords, humbly hoping, that the same will be reversed so far as the same affects them, for the following (amongst other)

R E A S O N S :

1. It having been admitted, that the appellants had, under some agreement, paid Doctor *Waller* compositions in lieu of their tithes, for every year, from *Michaelmas* 1771, to *Michaelmas* 1777 inclusive, therefore, although Doctor *Waller* might have a right to determine the compositions, yet he could not do it without a reasonable notice to the parties; and the appellants contend, that the notices which are men-

* See the case of the defendants, under *Hilary Term*, 21 *Geo. III.* tioned

tioned in the pleadings to have been given for determining such composition, and for taking the tithes in kind, unless a new agreement was made with the doctor's real or nominal lessee, were unreasonably too short, and therefore insufficient notice for that purpose; the notices given by the doctor and his assignee were three in number; the *first* was given on September 12, the *second* between the 20th and 27th; and the *third*, upon the 29th of the same month; all these notices affect to put an end to the composition from the *Michaelmas-day* then next; the interval between the earliest notice, and the day on which it was to take place, is not three weeks; it is established, that a tenancy from year to year, in the case of farms, cannot be determined by the landlord, without six month's notice prior to the end of the tenant's year; and it is conceived, that tithes have repeatedly been held to stand, in this respect, upon the same footing with corporeal property; it seems reasonable, that either party intending to put an end to such a composition, and to pay or require payment of tithes in kind, ought to give a longer notice of that intention, particularly so, where the notice is given to the tenant, that he may be the better enabled to adopt the mode of his cultivation to the nature of his tenure; it cannot be disputed, but that in the exercise of that discretion, which every man has a right to exercise, and every prudent man will exercise, as to the mode of agriculture most likely to be beneficial to him, it is of importance to him to know, whether he is to set out his tithes in kind, or to pay a pecuniary composition in lieu of them, and to conceal an intention to put an end to such a composition (*continued uninterruptedly for six years, under a supposed agreement*) and thereby delude a man into a belief that it is to continue, appears to be un-

Legal notice for
quitting farm.

reasonable and unfair conduct on the part of the lessor, of which, it is presumed, a court of equity ought not to admit him to avail himself; it is a fact, that every landlord thinks himself obliged to give a much longer warning to his nurseryman tenant, when he means to determine his holding, than he does to the common farmer; the usage has certainly been, to give the nurserymen three years notice; if the notice were insufficient, the account ought not to have been directed; doctor *Waller* and his lessee would then be intitled to the composition only during the litigation, and consequently the respondent's bill would have been dismissed.

Predial tithes
defined.

2. The decree directs an account of HOTHOUSE and GREENHOUSE plants; it is conceived, that these are not titheable in point of law; if they can be ascribed to any class of tithe, it must be to that of predial tithes, the definition of which is, that they arise merely and immediately out of the ground; the plants in question, it is well known, are not the produce of the soil of this country; a climate and compost must be procured to keep them in a state of vegetation; they do not grow in the earth, nor derive their sustenance from thence; some of them cannot by any art be propagated in this country; and as to pine apples, one of the principal exotics that can ever produce profit to the parson, by their successful increase; it is conceived they cannot be deemed titheable, when it is considered, that the skill and labour of several years is absolutely necessary to be bestowed upon them, in order to bring them to maturity, independent of the very great expence of hot-houses of the different classes, tan, fire, &c. that they are nurtured in pots from the first moment of their existence, to the final period of it;

are

are removed from one successive house to another, as they make their slow approaches to *edible* perfection, which is only attainable by the skilful management of artificial heat; that they never communicate with the natural earth, and very often in their last stage to maturity, are mere resiants for a few months only in that parish where they are cut; that they are actually a commercial merchandize, are daily bought and sold in their various stages to perfection, and a great part of them actually propagated in *one* parish, nurtured in the succession houses of a *second*, and very frequently pushed into fruit, ripened, and cut in a *third* or *fourth* parish; every argument respecting pine apples, may, with equal propriety, be applied to orange trees, with this additional circumstance, that the orange tree, in the first instance, costs the importer nearly half as much as he sells it for when arrived to perfection, after many years expensive cultivation, exclusive of thirty *per cent.* duty paid on the importation; these facts are well known, and uncontrovertible; it is necessary to say, that if the payment of tithes for exotic plants in general (great numbers of which are annually imported to this kingdom at a very heavy expence, besides freight and duty) including pine apples, orange trees, &c. is to be added to the expence of cultivation, there must be an end to that *species* of hotticulture. The appellants further presume, that such trees and hot-house plants as do actually grow in the soil, but would not there grow without artificial heat, are not the proper subject-matter of tithing; and with respect to all other *species* of nursery trees, which are bought in *one* parish, remain but a little time in a *second*, and are purchased by a customer living in a *third*, and frequently undergo a greater number of removals before they are ultimately planted for use; it is hum-

bly conceived, that the respondent is not well founded in contending, that they are subject to pay a full tenth of their *whole* value upon *each* removal from one parish to another.

3. It may possibly be said, for it has been relied on, that there was no evidence of the cultivation of these plants; if that be so, yet surely there was enough to have induced the court to have directed the proper officer to have inquired into, and to have stated the nature of the culture, with the uncommonly heavy expence necessarily attending it, before they had proceeded to decree the payment of tithes; the bill (*inter alia*) demanded the tithes of pines, melons, grapes, hot-house plants, &c. the appellants resisted the demand, and insisted they were not titheable; the decree has nevertheless directed an account generally, and payment of all the *species* of tithe demanded. Supposing the court could not take judicial notice of that which all mankind knows (which is a position not to be admitted, and untrue in many instances) yet surely private knowledge of a notorious usage might have dictated an inquiry, which would have given judicial knowledge.

4. Because the decree, by directing an account generally, hath declared the respondent to be intitled to every tenth exotic plant, and to every tenth pine apple, and orange tree, without the least regard to the original expence of purchase, which *sometimes* comes to a third, and *often* to half the expence for which, when ripened or brought to perfection, they are sold at the market, independent of the very large expence of hot-houses, an expence totally unknown in the cultivation of any of the predial tithes of.

of this country ; therefore it is humbly submitted, that the decree ought *at least* to have directed the officer, in taking the account, to have made *fair allowances* for the *very heavy* expences peculiarly attending the cultivation of exotics, and not to have decreed an account *generally*, which, if so taken, must do apparent injustice to the appellants ; wherefore the decree ought also, it is humbly contended, to be reversed or varied.

*The Case of the * Respondent.*

In the decree pronounced by the court of *Exchequer* in the original cause, all the parties have acquiesced, except the appellants, who seem to admit (what is most clearly proved in the cause by their own acts and declarations) that no agreement was made between any of them and doctor *Waller*, which was or was *not* intended to be permanent during his incumbency, although they had severally, by their answers, claimed the benefit of such an agreement, and have thought proper to appeal to your Lordships, alledging in their petition of appeal, that they conceive themselves aggrieved by the said decreetal order of the said court of *Exchequer*, inasmuch as it having been admitted, that the appellants had, by virtue of some agreement, paid to the said *James Waller*, compositions for and in lieu of their respective tithes from *Michaelmas 1771*, to *Michaelmas 1777*, inclusive ; that the said several notices in the pleadings in the said cause, mentioned to have been given for determining such compositions, and for taking the tithes in kind, were short and insufficient notices for that purpose ; and that therefore the re-

respondent's bill ought to have been dismissed, as against the appellants; but that, supposing such notices were good and sufficient, yet that such part of the said decree is erroneous, as directs an account to be taken of what is due to the respondent from the appellants for tithes of pines, melons, and hot-house plants, green-house plants, exotic plants, shrubs, trees, or roots, purchased by them, and sold again without having made an increase in number, inasmuch as the appellants apprehend, that several of the said matters and things are not in their nature titheable, and that others of them are not titheable in kind; and that therefore the appellants conceive that the said decree is erroneous.

But the respondent humbly insists, that the said decree is just and right, and therefore hopes the same will be affirmed with costs, by your Lordships, for the following (amongst other)

R E A S O N S :

1. Because the principles upon which notice is required by law, in order to determine demises of lands or houses, or even of tithes, do not apply to cases of composition paid for tithes, the payment of such compositions being only, it is apprehended, in consideration of law, a *mode of rendering the tithes*; the true ground upon which the law requires notice to determine such demises, is the presumed intention of the parties, the law inferring, from the obvious convenience of notice to the parties, that both intended, that if either should be desirous to determine the relation subsisting between them, he should give the other a reasonable notice of his purpose, but the law, considering compositions for tithes as being in
all

all cases equal in value to the tithes compounded for, or rather, *as tithes rendered in value*, though not in *species*, deems it equally convenient to the party who is to accopt for the tithes to pay them in *species*, as to render them in value, and cannot therefore, consistently with it's own principles, infer that the parties to such a contract (to render tithes in value and not in *species*) intended that notice should be necessary to determine it, unless the parties express that intention in a written agreement,

2. Because the want of notice to determine compositions for tithes is not, in fact, attended with the inconveniencies, which the law, by requiring it, meant to prevent in the case of landlords and tenants.

3. Because, though it has been urged that such notice is reasonably required, inasmuch as if the party who is to accopt for the tithes had received it, he might have changed the mode of cultivating the land which yields the tithes; it is submitted, as an answer to such an argument, that notice admitted to be reasonable, would scarcely, in any case, be received for so long time before the determination of the composition, as to enable the party receiving it to change the mode of husbandry or culture, or the nature of the produce, if he had the power of changing it, which in most cases he has not; in the present case, where the produce of nursery grounds is raised in succession, year after year, notice admitted to be reasonable, would not enable the nursery gardener to change the mode of cultivating the ground.

4. Because, though notice has been formerly stated to be reasonable, that the party receiving it may,

may, if he shall think fit, suffer his lands to be wholly uncultivated, it is presumed, that such an argument will not, in modern times, be offered to a court of justice.

5. Because it hath been settled, by many decisions in former cases, that notice given one week or at any time before the end of the year, for which the composition was made, is notice fully sufficient in law.

6. Because, in fact, the appellants had sufficient notice, from what passed at some or one of the meetings, held previous to the time when the first written notice was given to them, as well as from the written notice or notices, in fact given of the incumbent's intention to determine these compositions.

7. Because, if the notices given were not sufficient, yet the appellants having severally insisted, that these compositions could not be determined, but with the incumbency of the vicar, have thereby disclaimed the only relation to the incumbent or his lessees, which could possibly intitle them to receive or require notice from either; by this adverse claim, they have declared, that notice is not necessary; notice is not necessary to determine a tenancy at will, where the tenant sets up a title adverse to that of his landlord; if any of these temporary compositions had been pleaded as a *modus*, it is apprehended, upon the authority of an adjudged case, that the party pleading it, as *such*, could not avail himself of the want of notice to determine it; and a plea of a permanent agreement, during incumbency, is as inconsistent with the relation which makes notice necessary, as a plea of a *modus* is; the appellants do not (and against the real truth so fully established

Where notice not necessary to determine a tenancy at will.

Party pleading composition as a *modus*, cannot avail himself of want of notice to determine the former.

established by the evidence in these causes, they could not) consider themselves as aggrieved by so much of this decree as proceeds upon the fact, that these compositions were only temporary.

8. Because it is apprehended, that pines, melons, hothouse plants, greenhouse plants, and exotic plants, shrubs, trees, or roots, purchased and sold again, without having made an increase in number, or which are raised in common gardens, or elsewhere, for sale in the market, are titheable in their nature, and titheable in kind.

9. Because it may be shewn, that the arguments which are drawn from the expence, difficulty, and artificial mode of raising these productions, and from the nature of the soil, climate, and places, in which they are produced, and are urged to prove, that they are not titheable matters, or not titheable in kind, would equally serve to prove various other vegetable productions not titheable, or not titheable in kind, which have always been admitted to be so; and would tend to prove, that the same productions might be reasonably deemed titheable in some parts of the kingdom, which could not be so considered in other parts of it, which would, perhaps, in a great measure serve to prove (if not much qualified) that most vegetable productions are not titheable matters.

10. Because, if exotics, as such, are not titheable matters in this country, (the vegetable productions of which are believed not to be indigenous, except in some few instances) the land would scarcely yield any titheable matter.

11. Because

11. Because, if it is inconvenient that productions of this sort, raised for sale in the market, should be deemed titheable, or titheable in kind, (which inconveniences in the present case, the conduct of the appellants has occasioned, the incumbent having been always willing to accept a reasonable composition *an acre*), such inconveniences can be remedied only by an act of the legislature, and cannot be removed by those who in their judicial characters and capacities are only to declare what the law now is.

12. Because it has been long settled, that plants, shrubs, trees, fruits, and roots, planted and raised in nurseries, and sold out again, without having made an increase, are titheable in kind; and it is reasonable that they should be so considered.

April 19, A. D. 1782.

After hearing counsel upon the following preliminary point,

“ Whether the notice given was a sufficient notice to determine a composition for tithes,

The following question was put to the judges, viz.

“ Whether the notice given on the eighth day of September, was a sufficient notice to determine a composition for tithes, from year to year, such years commencing on the twenty-ninth day of September.”

I

Mr,

Mr. Justice *Gould delivered the unanimous opinion of the judges present upon the said question,

" That such notice was by no means sufficient.

Whereupon,

Ordered and adjudged, that the decretal order complained of, so far as it relates to the first mentioned cause, and the present appellants, be reversed, and that the respondent's bill be dismissed; and so far as the said order relates to the second mentioned cause, be affirmed,

judgment of the
House.

See the original cause, under Hilary Term, 21
Geo. III.

* See "the Nomenclature of Westminster-hall," at the end of "the Biographical History of Sir William Blackstone," Osborn edit. 1782.

Trinity Term, 22 Geo. III.

June 13, A. D. 1782.

In the House of Lords

Langdon John Full, Edward Luf-
combe, Richard Furneann, John
Webber, Robert Brown, John
Dearing, and Margaret Soper, } Appellants.
 farmers and occupiers of land
 in the parish of *Dittisham*, in
 the county of *Devon*,

The Reverend John Hutchings,
 clerk, rector of the said parish } Respondent.
 of *Dittisham*,

*The Appellants * Case.*

THE respondent's costs have been taxed at the sum of one hundred and twenty-eight pounds, three shillings, and four-pence, which sum the appellants have been obliged to pay, though the costs attending that part of the cause, which related to the tithes claimed by the original bill, and which the respondent afterwards relinquished and gave up, amounted to near one half of the bill of costs, and which the appellants contend ought not to have been charged or allowed the respondent.

The appellants conceiving themselves to be aggrieved by the said decree, have appealed there from

* See the case of the defendants in this cause, under *Trinity Term*, 22 Geo. III.

to your lordships; and humbly hope the same will be reversed or varied, for the following (among other)

R E A S O N S :

1. Customs of setting out all tithes have almost constantly resulted from experience of mutual advantage to the owners of the tithe, and occupiers of the titheable property; and particular circumstances of extent of situation, &c. &c. will make those customs which are upon that principle of mutual advantage reasonable in one parish, unreasonable in another; and it is therefore almost impossible for those who live at a distance from those parishes, and are not apprized accurately of these circumstances, to exercise a fair judgment upon the legality or illegality of the local custom; for which reason it appears to be necessary, in all cases, where the legality of a custom is disputed in courts of equity, that an issue at law should be directed, and the fact ascertained by a verdict in the county which is the scene of the dispute; with a view to this principle, ecclesiastical courts have been, from the earliest periods of our law, restrained by prohibitions to their proceedings, when customs or *modus* are in dispute, their trials not being by juries; such being the known practice of the common law courts, in their controul over the ecclesiastical courts (the practice in which and courts of equity is very similar) courts of equity should impose a similar controul upon themselves.

2. Courts of equity have decreed against customs, to pay less than a tenth part in kind, as unreasonable, being only a part of the tithe in lieu of the whole; in this present instance no such custom is averred; the appellants set out in their answers a
custom

custom of paying a tenth part; they have given evidence of such custom, and of the fact, that they punctually observed it in a fair and just manner; there was no evidence to the contrary, nor any circumstances of fraud alleged on the part of the respondent, which he would not have omitted, had there been any foundation for such a charge.

3. The tenth part of almost every *species* is due by law, *toties quoties*, as it may arise, nor can a doubt be entertained but that as milk daily renewed, the tenth part of each day's produce, if not of each meal, was originally due for tithes; but mutual ease and convenience, in different parishes, have established a variety of customs in setting out the tithes of milk, and of *modus*es in lieu of them; in many parishes, every tenth morning's meal for a certain portion of the year, and every tenth evening's meal for the remainder of it, is the custom; in others, every tenth meal; in some, a certain quantity of cheese; and in others, a very small sum has been taken in lieu of the tithes of milk; in the present case every tenth meal of each cow is the custom, computed from the time she comes in milk, which is a determinate period from the birth of her calf; so that no fraud can be put in practice, to put all the tithe milk into an evening's meal, but the same is duly set out mornings and evenings; and nothing appears in the present instance, but that as many meals of milk were set out in the mornings as in the evenings; the present instance seems to be supported by the constitution of Archbishop *Winchelsea*, that "the tithe of milk shall be paid from the time of it's first renewing," &c. *Linwood* 199. the renewal of milk is certainly from the usual time of milking, after a
cow

cow has had a calf, and this custom is what the appellants claim, and what they have punctually observed ; it is a custom founded not only on this constitution, but on mutual convenience to the respondent and the appellants, the parish lying within very narrow limits, and the several farm houses in it lying at a distance extremely convenient for the tithe gatherers to collect the tithe milk from all of them ; from this custom therefore, the respondent and appellants derive mutual benefit, each receiving a daily constant supply of so necessary an article as milk ; and it occasions less trouble to the respondent to send round every day after his tithe milk, than for the generality of farmers to tend and milk their cows ; and as to throwing away the milk at the next milking season after setting it out, where the vessels are wanted, it is a custom well known to be warranted by judicial determinations.

4. The present decree, it is supposed, was founded on the recent case of Doctor *Bosworth* and *John Limbrick*, [which see under *Michaelmas Term*, 18 Geo. III.] but, it is contended, is not in any respect similar to *this* ; in *that* case no particular custom was claimed or proved ; in *this*, a custom is the subject in dispute, and has been proved ; in *that* case many circumstances of deceit and unfair practice were evident ; in *this* not a circumstance of that kind appears ; in *that* case it was proved, that a full tenth part was not set out ; in *this*, proof has been given, that a full tenth has been set out ; there is no similitude therefore between the two cases.

It is a circumstance attendant upon tithes in general, and on those of milk in particular, that they cannot be collected, without some degree of inconvenience, and whoever becomes intitled to them,
must

must accept them liable to those inconveniencies ; it is demonstrable to those who know the situation and extent of the parish of *Dittisham*, that the mode of setting out the tithes of milk, which the respondent expects by every tenth days milk, must be attended with great inconvenience, and much more than would arise from the custom which the appellants claim ; because it is clear, that every rector will become entitled, on the tenth day after his institution, to all the milk in his parish ; so that in a parish of large extent, and in which there are large dairies, and even in the parish of *Dittisham*, he would find much trouble, in collecting all the milk, on every tenth day ; his dairy should be as large as all the dairies in his parish ; it would be necessary for him to have as many pans or vessels to contain his milk, as all his parishioners together ; in short, on every tenth day, he would be deluged with milk, and upon the intervening days he would have none ; the inconvenience which would attend this mode of setting out the tithes of milk, as to the appellants, by depriving them of milk for their calves, and other purposes of domestick use, is too obvious to be pointed out ; and it can be of no other advantage to the respondent to establish the mode of tithing which he demands, [*contends for*, J. R.] than to give him the power of demanding an exorbitant price for the tithe of milk, or of taking it in kind from those who have incurred, or may incur his displeasure, in a manner, the most inconvenient, and oppressive.

As to costs ; though discretionary in the court, they are never given, where the party either deserts or fails in proof of the right, which he himself states and claims ; in the present case, the respondent, by his original bill, claimed all tithes whatever arising within the said parish of *Dittisham*, and required an account

account from the appellants, of the respective lands they held in the parish, and an account of the different *species* of tithes, and satisfaction for them, from the time of his institution, though he had compounded with them, and had actually received from them regular payments in lieu and satisfaction for such tithes, the appellants were therefore obliged to put in separate answers to this bill, which, from the accounts they were to set forth, made them very long, troublesome, and expensive ; and the respondent soon after the coming in of their answers, amended his bill, and left out every claim of tithes, except as to the tithe of milk, and on their answer to their amended bill, the respondent replied to that answer alone ; the appellants therefore apprehend that the court ought not to have given the costs generally, but should have directed, either that the respondent should pay to the appellants, the costs, which he had thus unnecessarily and unjustly thrown upon them, or should have directed the master, in taxing the costs, to have confined himself to those on the amended bill alone.

*The Respondent's * Case.*

The appellants have appealed to your lordships from the said decree ; but the respondent hopes the same will be affirmed, for the following (among other

R E A S O N S.

1. The established course of setting out tithe milk, is, that the intire meal of the whole herd of

* See the case of the plaintiff in this cause, under Trinity Term, 20 Geo. III.

cows should be set forth every tenth day, both the morning and the evening's meal.

The custom, as laid in the appellant's answer, is unreasonable and illegal ; it would be so expensive and inconvenient, for the respondent to collect the tithe milk, according to the supposed custom, that it would not be worth collecting.

2. If the custom was good in law, yet it is not so precisely and formally pleaded, as is necessary and required by courts of law and equity.

3. If the custom was good and well pleaded, yet it is not supported by evidence ; nor was there evidence sufficient given in support of it, to warrant the court to direct any issue respecting it.

June 13, A. D. 1782.

Judgment of the
House.

Ordered and adjudged, that the appeal be dismissed, and that the decree therein complained of, be affirmed, with one hundred pounds costs.

For the original cause, see Trinity Term, 20 Geo. III.

July

Trinity Term, 22 Geo. III.

1011

July 2, A. D. 1782.

In the *House of Lords*.

The Right Honourable *Brown-*
low Lord Brownlow, (Impropri-
ator of the Rectory of the Pa-
rish Church of *Stanground* with
Farcet, in the County of *Hunt-*
ingdon) } Appellant.

The Reverend *James Devie*, Clerk, } Respondent.
(Vicar of the same Parish)

*The Appellant's * Case.*

IN *Michaelmas* Term, 1780, the appellant applied to the court of *Chancery* by motion, that the verdict obtained by the plaintiff in this cause, at the summer assizes at *Huntingdon*, in the year 1780, should be set aside, as contrary to law, and also to evidence, and that a new trial should be had of the issues, and the matter of the said motion being argued on several days, and for the last time on *March* 5, 1771, stood over for judgment; and on *May* 28, 1782, the Lord Chancellor was pleased to reject the said application, and refused to make an order for a new trial of the said issues, or any of them; which refusal the appellant conceives to be erroneous, and that he is aggrieved thereby, and has therefore appealed to your Lordships, and humbly hopes, that the said verdict will be set aside, and a new trial had, for the following (among other)

* See the case of the defendants in this cause, under *Michaelmas* Term, 19 Geo. III.

R E A S O N S :

The verdict is contrary to the truth and justice of the case in many material parts, and, as to some of them, founded under the misdirection of the judge in matters of law.

1. With respect to the respondent's right to the tithe of corn, it appears on his own shewing, by his title under the last of Sir *Walter Mildmay's* grants, that his right was to tithe corn, in the hamlet of *Farcet*, with an exception (and that too very extensive), but the jury have found his right to tithe corn in that hamlet, without any exception whatsoever.

The injustice of the verdict in this material part of the case is so apparent, that the vicar now (for the first time) resorts to the extraordinary expedient of attempting to maintain, that the exception ought to be expunged out of his own title deed, as being inserted by mistake of the drawer; this never was thought of, till near two hundred years after the date of the deed, and cannot be worthy of an answer, after the admission of the exception in the words of it, both by the college and the vicar, recorded in their answers in *Chancery* in 1685, which were read at the trial; and the only question then was, as to the quantity of lands comprized in the exception.

2. The jury have found, that all the lands in the third issue, except sixty doles of *King's Delph*, lie in the hamlet of *Farcet*, and have found, on other issues, that the vicar is intitled to tithes of corn throughout the hamlet of *Farcet*; so that as the verdict now stands, the vicar is found to have a right to tithe corn over all the lands in the third issue, except

the sixty doles in the *King's Delph*; whereas it was not proved, that all those lands are in the hamlet of *Farcet*; and as *Stanground* is the mother church, the presumption is, that lands in that parish are not within the chapelry or hamlet, unless proved so; but the judge not only admitted modern evidence to prove lands to lie in the hamlet, which by the true construction of the statutes, 15 Car. II. chap. 17. *sect.* 6, 52. and 17 Geo. II. chap. 37. ought not to have been admitted, but also allowed various papers not signed by any person, as evidence, though the same was opposed by the appellant's counsel; and with respect to *Farcet Fenn*, it appeared by the recital in the last of the vicar's leases, that only part of it lies in the hamlet of *Farcet*, and yet the jury have found the whole to lie there, and have thereby rejected that part of the recital, notwithstanding other parts of that recital were ruled by the judge to be decisive, as to other matters against the appellant; and it was clearly proved by the crown receiver's accounts, and by royal grants of *Stanground Manor*, and also by old depositions, that *Farcet Fenn* was part of the demesnes of the manor of *Stanground*, and yielded some profit, even before the drainage, to the lord of that manor, notwithstanding it was subject to right of common; and therefore such part of it as lies in the hamlet of *Farcet*, is within the exception in Sir *Walter Mildmay's* last grant; and by the common law the master and commons of every manor, whether they afford profits to the lord or not, are part of his demesnes; but the judge was of a contrary opinion, and declared to the jury, that *Farcet Fenn* was not part of the demesnes, because not reserved (as he said) for the lord's use; which was a misdirection in point of law, and also in matter of fact; and not only *Farcet Fenn*, but such other lands in this issue,

15 Car. II.
chap. 17.
17 Geo. II.
chap. 37.

except the old *Conquest Close* and some of the *Eight Roads*, and some few other small pieces, which were proved to be in the manor of *Farctet*, appeared by evidence of enjoyment, and acts of ownership by the lords of *Stanground*, and by reputation, and otherwise, either to be part of the demesne lands of *Stanground*, or else to be part of the other lands in the exception; and therefore as to all these the verdict, as found, without any exception, is unjust, even supposing the right to the tithe corn in question was now open to litigation; but

3. The right to tithe corn in most of the lands, in the third issue, has been often contested, and sometimes decided by verdict in favour of the rector, and at other times ended in *non suit* of the college; which *non suits* by old depositions and otherwise appear to have been on the merits, without a single instance, till now, of any suit wherein the rector failed, or wherein the vicar or college, or any other opposing the rector, ever succeeded.

The rectors have ever since enjoyed the corn tithe of these lands, without any demand by the vicars; for as to part, they were not included in any of the leases made by the vicars to the rectors; and as to those lands, the tithes of which were included therein, the leases are in such terms as do not extend, nor could be meant to extend, to any but small tithes, as the vicar was entitled to; and as to the payment of twenty-five pounds a year, that could not be for the corn tithes in litigation, because it is admitted to have commenced before, and to have continued during all former litigations, as well as ever since; and besides, it is too low for a composition commencing any thing like so late as 1640, for all the tithes now claimed

claimed by the vicar over so extensive tracts of land; and therefore it is submitted, that the claim of the respondent, as to tithe corn of any of those lands, is concluded and barred by former determinations, and constant enjoyment under them; but supposing the length of time not conclusive against the respondent, then by the same rule it cannot be so, against the appellant; consequently the validity of the grants is still open to all legal objections, and several such objections were insisted on at the trial, as proper to be argued, if the case was not concluded; but the judge would not enter into any consideration about them.

4. That part of the parish, which lies in *Cambridgehire*, ought to have been excepted in the verdict on all the issues.

Because the only written evidence on the first issue was not an original, but an entry of the substance or import of an endowment, which made it necessary, in support of the vicar's title, to prove enjoyment under it, which he did, by two or three living witnesses, who had collected small tithes; but all of them agreed that no tithes of any kind whatever had been collected or demanded by, or were due to the vicar for that part of the parish which lies in *Cambridgehire*; and both Sir *Walter Mildmay's* grants are in such terms, as, by legal construction, do not extend out of the county of *Huntingdon*, and the construction is confined by usage; and therefore the not excepting that part of the parish which lies in *Cambridgehire* out of the verdict on all the issues, is manifestly unjust, by extending the vicar's claims over large tracts of lands, of which there was no enjoy-

ment since the creation of the vicarage in any of the respondent's predecessors.

5. It appeared at the trial, by the testimony of living witnesses, and by the old depositions, that "*New Meadow*" is discharged from all tithes, in consideration of a tithe acre immemorially enjoyed by the rectors in lieu of the tithes thereof; and as the locality of that meadow makes part of the third issue, and it is found to be in the hamlet of *Farctet*, therefore the same and the tithe acre ought to have been excepted in the verdict on all the issues.

6. The construction of the words "*garbarum cuiuscunque generis*" and "*bladorum, fœnique*" in the exception of tithes in the endowment of 1402, was misunderstood at the trial; it was then and is now humbly insisted, that by the legal import of the word *garbæ*, tithes of wood, as well as of corn and grain, are included, unless restrained by usage, or the context; but in this case there was no instance proved of payment of tithe wood to any vicar; and the context, so far from restraining the sense of the word, plainly shews it was intended in the largest sense; yet, as the verdict now stands, the vicar is intitled to tithe wood contrary to an established principle of law, "that a vicar cannot be intitled to any particular *species* of tithe, otherwise than by endowment, or prescription, and that all others by law belong to the rector;" the respondent's bill is to establish his right as vicar against the appellant the rector, to all tithes [*claimed*, J. R.] to be due to him by the bill, of which tithe wood is one; and therefore, whether there is now any titheable wood in the parish or not, or whether the charge in the bill be true or not, that *Farctet Penn* was antiently part of the King's forests, and

Vicar intitled to tithes by endowment or prescription, and to such only, as therein specified; all other tithes belong to the rector.

and known by the name of *Farshevid Ferry*, yet as the bill is to establish the vicar's right to all the tithes mentioned in his bill, the right to tithe wood ought to have been excepted out of the verdict on the first issue.

7. The judge neglected taking any notice of the word *bladorum* in the exception, though it was at the trial, and is now humbly submitted, from the obvious import of it, as well as from the context, to mean tithe of grass or corn depastured by cattle, or cut green, and before ripe, and given to cattle; which includes agistment tithe, and also tithes of grass and of corn, vetches, tares, and other grain or pulse, when cut green and given to cattle; and therefore these *species* of tithe ought also to have been excepted out of the verdict on the first issue.

8. The respondent's right to tithe corn in any particular part of the parish depends upon two facts; the one, that such part lies within the hamlet of *Farcet*; the other, that it is not part of the demesnes of the manor of *Stanground*, or of the other excepted lands; the respondent found it impossible to support this claim over the lands in the third issue, without * *assuming* a fact (which he had no right to do without proof) that the manor and hamlet of *Farcet* are *co-extensive*; but in this case, there was not only no proof at all of it, but clear proof to the contrary, besides demonstration on the face of the respondent's own title deed, which expressly excepts demesne lands of the manor of *Stanground* out of the grants

* As the word *assuming* means "to suppose something without proof," is it not rather improperly used in the text? J. R.

of tithes of lands in *Farcet*; this was urged to the judge by the appellant's counsel, who requested him to take notice of it to the jury, which he did not, but suffered the evidence, as to any piece of land being in the hamlet, to be evidence, that it was in the manor, and so on the reverse.

For these and other reasons to be offered at your lordship's bar, the appellant hopes that the verdict complained of, will be set aside, and that a new trial will be granted of all the said issues.

APPENDIX to the Appellant's Case.

Ordinatio Vicariæ Stanground.

“ *LIMITATIO portionis vicariæ ecclesiæ parochialis de Stanground, Lincoln. diocess. religiosi viris abbati et conventui de Thorney ordinis sancti benedicti Elien. diocess. auctoritate apostolicâ canonicè uniata et appropriatæ per dictos religiosos facta, sequitur in hæc verba: Imprimis, dicti religiosi assignant dicto vicariò et successoribus suis in eadem vicariâ instituendis pro manso portionem rectoris inædificatam ecclesiæ parochialis prædictæ propinquiorem, quem quidem locum dicti religiosi primâ vice suis sumptibus ad opus dicti vicarii et successorum suorum competentur edificabunt, viz. aulam, duas cameras cum subcellariis unam coquinam, unam stabulum cum clausurâ, et gardino et portis, et cum dictus locus semel ut prefertur per dictos religiosos fuerint [fuerit, J. R.] constructus subsequentes dicti vicarii qui pro tempore fuerint dictum mansum reparabunt et sustinebunt suis sumptibus propriis.*

“ *Item*

“ Item habebit vicarius dictæ vicariæ qui pro tempore
 “ fuerint [fuerit, *ſ. R.*] octo acras terræ arabilis ja-
 “ centes in campis de Stanground, quarum una jacet
 “ juxta Brode Ee, ex oppoſitio Dunwych Croft quæ eſt
 “ de antiquâ glebâ rectoriæ et alias ſeptem acras terræ
 “ quas ultimo tenuit Robertus Andrew a religioſis ante
 “ dictis in campis ſuperiùs nominatis et quinque acras præ-
 “ ti jacentes in prato vulgariter nuncupato North Ee
 “ quas quondam Edgarus de Burgo tenuit, Edgardole
 “ vulgariter nuncupatus, a quibuſcunque decimarum ſo-
 “ lutione et temporalis ſervitii et exactionis præſtatione
 “ liberæ penitus et immunes imperpetuum.

“ Item habebit dictus vicarius qui pro tempore fuerint
 “ [fuerit, *ſ. R.*] pro proportionem ſuâ imperpetuum om-
 “ nes fruſtus redditus et proventus decimaſque et oblationes
 “ univerſas ad eandem eccleſiam qualitercunque proveni-
 “ entes et pertinentes (decimis garbarum cujuſcunque ge-
 “ neris, bladorum ſæniſque ac lanæ et agnorum et vitu-
 “ lorum quoties vitulus decimus in ſpecie fuerit ſolvendus,
 “ ad eandem eccleſiam qualitercunque provenientium, nec
 “ non glebâ et manſo rectoriæ eccleſiæ hujusmodi [ejuſ-
 “ modi, *ſ. R.*] duntaxat exceptis, quæ ad religioſos
 “ hujus [huc uſque, *ſ. R.*] ut ipſius eccleſiæ propri-
 “ etarias imperpetuum pertinebunt) ſalvis habitatione vi-
 “ cariæ et ſcitu [hortûs, *ſ. R.*] ejusdem ſuperius deſig-
 “ natis dicti inſupèr religioſi omnia onera dictæ eccleſiæ
 “ incumbentia ſeu in futuro cujuſcunque auctoritate indu-
 “ cenda vel imponenda ſuis ſumptibus et expenſis perpe-
 “ tuis futuris temporibus agnoſcent ſubibunt et ſupporta-
 “ bunt ſalvo quod vicarius dictæ eccleſiæ pro tempore
 “ exiſtens parochianis dictæ eccleſiæ ſacramenta et ſacralia
 “ miniſtrabit ipſæque eccleſiæ in divinis officiis per ſe vel
 “ per alium debitè faciet uſerviri unumque capellanum
 “ idoneum in capellâ de Farſhed ad dictam eccleſiam per-
 “ tinente ſuis ſumptibus et expenſis juxta morem præteriti
 “ temporis

“ *temporis inuenient divina ministrantem volunt insuper
 “ et assignant dicti religiosi pro se et successoribus suis quod
 “ distribuantur inter pauperes parochianos dictæ parochiæ
 “ de fructibus ipsius ecclesiæ, viginti solidi singulis annis
 “ quamdiu prædicti religiosi ipsam ecclesiam sic tenuerint
 “ appropriatam in quarum quidem compositionis et inuen-
 “ tionis fidem et testimonium sigillum nostrum presentibus
 “ est appensum datum Oxon, undecimo die mensis Aprilis,
 “ anno Domini, millesimo quadringentesimo secundo et
 “ consecrationis quarto.”*

Note; There are two copies or entries of the above instrument of endowment, one in the registry of Lincoln, and the other at Bugden.

To the copy at Bugden is added an entry or memorandum of a subsequent augmentation to the vicarage of Stanground, as follows :

“ 22 Hen. VI. 1444, Augmentation.

“ * *Nuper dominus Johannes Kirketon, abbas reg. Hen. VI. 22do. augmentauit portionem dicti vicarii conferendo eidem tertiam garbam decimis granorum in campis de Farshod.*”

*Translation of the above original Endowment,
 dated 11 April, 1502.*

“ *The extent of that part of the vicarage of the parish
 “ church of Stanground, in the diocese of Lincoln,
 “ given to the religious men, of the abbot and convent of
 “ Thorney, of the order of St. Benedict, in the dio-
 “ cese of Ely, by apostolical authority, canonically united*

* The late Lord John Kirketon, abbot, increased in 22 Hen. VI. the stipend of the said vicar, by conferring thereon the third of corn with the tithes of grain, in the fields of Farshod.

“ and appropriated by the said religious men, follows in
 “ these words ; First, the said religious men assign to
 “ the said vicar, and to his successors, in the same, to be
 “ appointed, an unbuilt part belonging to the rector,
 “ nearest to the parish church aforesaid, for a mansion ;
 “ which place the said religious men shall at first com-
 “ pletely build, at their own expence, for the use of the
 “ said vicar, and of his successors, viz. a vestibule,
 “ two rooms with closets, one kitchen, one stable with
 “ an inclosure, and a garden and gates ; and when the
 “ said place is once built as aforesaid, by the said re-
 “ ligious men, the said successive vicars, for the future,
 “ shall repair and support the said mansion at their own
 “ expence.

“ The vicar of the said vicarage for the time being,
 “ shall also have eight acres of arable land, lying in
 “ Stanground fields, one acre of which lies near Brode
 “ Ee, opposite Dunwich croft, which belongs to the an-
 “ cient rectory ; and seven other acres of land which
 “ Robert Andrew one of the aforesaid religious men
 “ was last possessed of, in the fields aforesaid ; and five
 “ acres of meadow lying in a meadow commonly called
 “ North Ee, which Edgar of Burgh formerly held, and
 “ therefore generally colled Edgardole, totally free and
 “ for ever discharged from the payment of all manner of
 “ tithes, and from the performance of temporal service
 “ and exaction.

“ Moreover, the said vicar for the time being,
 “ shall have all fruits, and every proceed and tithes
 “ and oblations, as and for his portion for ever,
 “ in any manner accruing and belonging to the same
 “ church, tithes of grain, of what sort soever, of
 “ corn and hay, and of wool, and lambs, and calves,
 “ (as often as a calf shall be payable in specie)
 “ howsoever

" however accruing or belonging to the same church, and
 " also the glebe and mansion of the rectory of this same
 " church; excepting only the perpetual property of the re-
 " ligious men of the said church, with a reservation of
 " the habitation of the vicarage, and the site of the
 " garden thereof, above described; the said religious
 " men shall besides acknowledge, submit to and sustain all
 " future burthens and incumbrances on the said church
 " whatever, and by whatever authority imposed or ex-
 " acted, at their own expence and charge for ever here-
 " after; provided, that the vicar of the said church for
 " the time being, shall find all necessaries for the sacra-
 " ment and altar, for the said church, in doing the duties
 " thereof, either by himself or a substitute, which he
 " shall cause to be properly executed; and shall provide a
 " proper chaplain in the chapel of Farhed, belonging
 " to the said church, at their own costs and expence ac-
 " cording to ancient custom, for the performance of the
 " sacred function; they moreover will and direct, that the
 " said religious men shall distribute for themselves, and
 " their successors, among the poor parishioners of the said
 " parish, from the revenues of the said church, twenty
 " shillings yearly, so long as the said religious men shall
 " hold the appropriation of the said church; in faith
 " and testimony of the making and drawing up of which,
 " our seal is affixed hereunto; dated at Oxford, 11
 " April, A. D. 1402. and the fourth year of our con-
 " secration."

*The first grant of Sir Walter Mildmay to Ema-
 nuel college, Cambridge, dated 24 October,
 A. D. 1588. A. R. 30 Eliz.*

This indenture made the four and twentieth
 day of *October*, in the thirtieth year of the reign of
 our sovereign Lady *Elizabeth*, by the grace of God,
 Queen

Queen of *England, France, and Ireland*, defender of the faith, &c. between Sir *Walter Mildmay* Knt. chancellor of her Majesty's *Exchequer*, and one of her Highness's most honourable privy council, of the one party, and the master, fellows, and scholars of *Emanuel college*, in the university of *Cambridge*, on the other party; WHEREAS there is and hath been of a long time a vicar of *Stanground*, in the county of *Huntingdon*, endowed of certain tithes and glebe lands within the parish of *Stanground* aforesaid, and *Farcot*, in the said county of *Huntingdon*, being of small value and not sufficient for the maintenance of the same vicar for the time being, the said Sir *Walter Mildmay* being owner of the manor of *Stanground* and proprietary of the rectory and parsonage of *Stanground* aforesaid, with all the rights and members of the same, and patron of the said vicarage of *Stanground*; and also, being minded and careful to provide a more fit and convenient mansion and dwelling place for the said vicar there for the time being, and to augment and increase the living of the now vicar of *Stanground*, and his successors for the time being there, to the intent that the same vicars may be the more able to teach and to instruct their flock, according to the rule of the holy gospel, and for the maintenance of good hospitality; in consideration whereof, and for the great love, favour, and affection, which he the said Sir *Walter* beareth to *Emanuel college*, in the university of *Cambridge*, lately founded by him the said Sir *Walter*, and for the trust and confidence which he repositeth in the master, fellows, and scholars of the same college, and their successors for ever, shall and will have care and consideration of the premises, and for the placing of a sufficient and able person from time to time to be the vicar of the church of *Stanground* aforesaid,

aforesaid, according to the true meaning of their statutes and ordinances heretofore made and provided by the said Sir *Walter Mildmay* for placing of sufficient ministers, meet and able to have care and cure of souls, and according to the true meaning of these presents ; THIS INDENTURE NOW WITNESSETH, that he the said Sir *Walter Mildmay*, for the considerations aforesaid, and for, and in consideration of the sum of five shillings, of lawful money of *England*, by the said master, fellows, and scholars of *Emanuel college*, in the university of *Cambridge*, to him the said Sir *Walter Mildmay* paid, he the said Sir *Walter Mildmay* HATH granted, confirmed, bargained, and sold, and by these presents DOTH grant, confirm, bargain, and sell unto the said master, fellows, and scholars, of *Emanuel college*, in the university of *Cambridge* aforesaid, ALL that messuage, house, or tenement, called or known by the name of the *parsonage house of Stanground*, aforesaid, in *Stanground*, in the said county of *Huntingdon* ; and all that close or croft called or known by the name of *Parson's croft*, with the appurtenances, in *Stanground* aforesaid ; and all glebe lands, meadows, and pastures, belonging and appertaining to the said messuage, house, or tenement, called the *parsonage house*, and now in the tenure or occupation of *Robert Smythe*, or of his assigns, for or under the yearly rent of fifty-three shillings and fourpence ; and also, all those his tithes of wool, lamb, and calf, yearly, and from time to time coming, arising, and renewing, within the parish, towns, and hamlets of *Stanground* aforesaid, and *Farct* in the said county of *Huntingdon* (except and always reserved out of this present grant to the said Sir *Walter Mildmay*, his heirs and assigns, all and all manner of tithes, wool, lamb, and calf yearly ; and from time to time, coming,

ing, arising, happening, or growing out of, for, or by reason of the demesne lands and tenements of the said manor of *Stanground*, in the said county of *Huntingdon*, now in the tenure or occupation of *Henry Parkinson*, or of his assigns.)

AND WHEREAS the now vicar and his predecessors hath or have had but one only third part of the tithe corn in *Farcet*, in three parts being divided, and the proprietary or owner of the said parsonage of *Stanground* afore said, the other two third parts of the said tithe corn in three parts being divided, of which two third parts the said Sir *Walter Mildmay* is seised in his demesne, as of fee, as part of the said parsonage of *Stanground*, the said Sir *Walter Mildmay*, for the considerations afore said, doth grant, confirm, bargain, and sell unto the said master, fellows, and scholars of *Emanuel college*, in the university of *Cambridge* afore said; one fourth part of all his said two third parts of the said tithe corn, which from time to time shall be coming and renewing within the said town, fields, or hamlet of *Farcet* afore said, being parcel of the said rectory of *Stanground*, the which fourth part of the said two third parts, together with the said other third part of the same tithe corn there, which the vicar of *Stanground* now hath and enjoyeth, shall and will amount together to a full moiety of all the tithe corn renewing in the said town, fields, and hamlet of *Farcet* afore said, and growing due to the parsonage or vicarage of *Stanground* afore said, in such sort, as whereas the now vicar hath, and his predecessors have had, but one third part of the said tithe corn in *Farcet* afore said, the said master, fellows, and scholars, and their successors, and the said vicar and his successors, shall have their portions, being laid out as taken together,

together, one full moiety of all the said tithe corn in *Forest* aforesaid. AND FURTHER the said Sir *Walter Mildmay*, for the considerations aforesaid HATH granted, bargained, and sold, and by these presents DOTH grant, bargain, and sell unto the said master, fellows, and scholars of *Emanuel* college, in the university of *Cambridge* aforesaid, the reversion and reversions of all and singular the premises, and also the yearly rent of fifty-three shillings and fourpence, of lawful money of *England*, yearly, payable for the said messuage, house, or tenement, and other the premises in the tenure or occupation of the said *Robert Smythe*; and also, all that the advowson, presentation, and right of patronage of the vicarage of *Stanground* aforesaid, (except and always reserved to the said Sir *Walter Mildmay*, his heirs and assigns, all the rents and yearly profits reserved or limited, to be paid of or for the said tithe corn, upon one lease for term of years heretofore made, of the said tithe and other things, which the said *Henry Parkinson* now hath) TO HAVE AND TO HOLD the said messuage, house, tenement, close, lands, meadow, pastures, tithes, portion of tithes, yearly rent of fifty-three shillings and fourpence above-mentioned, advowson, patronage, and other the premises herein mentioned to be granted, bargained, and sold (except before excepted) to the said master, fellows, and scholars of *Emanuel* college, in the university of *Cambridge* aforesaid, and their successors, to the only use and behoof of the said master, fellows, and scholars of *Emanuel* college aforesaid; and their successors for ever. AND the said master, fellows, and scholars of *Emanuel* college, in the university of *Cambridge* aforesaid, for themselves and their successors, do covenant, promise, and grant to and with the said Sir *Walter Mildmay*, his heirs, executors, and administrators,

administrators, and every of them by these presents, in manner and form following, that is to say, that the said master, fellows, and scholars, and their successors, at all and every time and times hereafter, when, and as often as it shall please God that the church of *Stanground* aforesaid shall become void or vacant of any incumbent, shall, according to the statutes of the said college, made for the presentations to benefices or churches, whereof they be patrons, nominate and present unto the ordinary of the diocese where the said church is, or to such as shall have authority in that behalf, by him to be admitted, and instituted, and thereupon to be inducted, one such able clerk as shall be then a member of the said college, and then shall be a sufficient and learned preacher, and qualified according to the statutes of the said college, in that behalf provided, and according to a branch of the late statute and law, made in the thirteenth year of her Majesty's reign, concerning such as are to be made ministers, or admitted to preach, it is enacted and required; and which clerk, at the time of such lawful nomination and presentation, shall have no benefice with the cure, or ecclesiastical living, dignity, or promotion requiring personal attendance by the laws of the realm or otherwise; and that the said master, fellows, and scholars of *Emanuel* college, in the university of *Cambridge* aforesaid, and their successors from time to time, and at all times hereafter shall and will not only permit and suffer, but also do what they may, to aid and help the now vicar of *Stanground* aforesaid, and their successors, vicars of *Stanground*, to have, receive, take, and enjoy, to his and their own proper use and uses, for and during so long time as he or they shall remain vicars there, the aforesaid yearly rent of fifty-three shillings and four-pence above in these presents

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mentioned, and all and every other the said messuage, close, croft, lands, meadows, pastures, tithe, and portion of tithe, above by these presents granted as aforesaid, with their appurtenances, without any interruption, let, or denial of them the said master, fellows, and scholars, and of their successors, or of any of them, and without any rent or service to them, or any of them, therefore to be yielded or paid. IN WITNESS whereof, the parties aforesaid to these present indentures, interchangeably have put their seals, the day and year above-written.

Walter Mildmay. (L. S.)

Sealed, and delivered, the day and year within written, in the presence of

Edmund Downynge,
John Rotsey,
T. Newett.

Acknowledged and inrolled in the court of *Exchequer*.

The second grant of Sir Walter Mildmay, to Emanuel college, Cambridge, dated 11 April, A. D. 1589. A. R. 31 Eliz.

This Indenture made the eleventh day of *April*, in the one and thirtieth year of the reign of our most gracious sovereign, Lady *Elizabeth*, by the grace of God, of *England, France, and Ireland*, Queen, defender of the faith, &c. between Sir *Walter Mildmay*, Knt, Chancellor of her Majesty's *Exchequer*, and one of her Highness's most honourable Privy Council, of the one party, and the master, fellows, and

and scholars of *Emanuel* college, in the university of *Cambridge*, of the other party. WHEREAS the said Sir *Walter Mildmay* hath lately founded and erected one college, within the university of *Cambridge*, called or known by the name of *Emanuel* college there, and hath also endowed the same college with divers lands, tenements, tithes, and hereditaments, and other things for the maintenance thereof, and yet having a good care and zeal for the establishment, and continuance thereof, to the glory and honour of Almighty God, and setting forth of his holy Gospel by good and able preachers, and for the increase of learning, and also for and in consideration of the augmentation and increase of living, of and for the vicar of *Stanground*, in the county of *Huntingdon*, THIS INDENTURE NOW WITNESSETH, that the said Sir *Walter Mildmay*, for the considerations aforesaid, HATH given, granted, and confirmed, and by these presents DOTH give, grant, and confirm, unto the said master, fellows, and scholars of *Emanuel* college, in the university of *Cambridge* aforesaid, ALL those his tithes of wool, lamb, calf, corn, and grain, yearly, and from time to time coming, rising, and renewing within the parish, town, or hamlet of *Farset*, in the said county of *Huntingdon*, (except and always reserved out of this present grant, to the said Sir *Walter Mildmay*, his heirs and assigns, all, and all manner of tithes of wool, lamb, calf, corn, and grain, and other things, which at any time or times hereafter shall be yearly coming, rising, happening, growing, or renewing, of, in, upon, out of, for, or by reason of the demesne lands of the said manor of *Stanground*, in the said county of *Huntingdon*, and of all other lands or tenements, now or late in the tenure or occupation of *Henry Parkinson*, *Michael*

Beale, John White, and Thomas Smythe, or any of them, by lease or grant for years, or at will, not being copyhold) and also, the said Sir Walter Mildmay, for the considerations aforesaid, doth by these presents give, grant, and confirm unto the said master, fellows, and scholars of Emanuel college, in the university of Cambridge aforesaid, all that the advowson and right of patronage of the church of Camell alias Queen Camell, in the county of Somerset, with the rights and members thereof, TO HAVE AND TO HOLD all and singular the premises, with the appurtenances above by these presents granted and confirmed (except before excepted) to the said master, fellows, and scholars of Emanuel college, in the university of Cambridge, aforesaid, and their successors, to the only use and behoof of the said master, fellows, and scholars of Emanuel college aforesaid, and of their successors for ever, upon trust and confidence, and to the end and purpose, that they and their successors shall and will perform and accomplish the covenant herein-after mentioned, and order and dispose the premises in the county of Huntingdon, according to my meaning therein expressed. A N D the said master, fellows, and scholars of Emanuel college aforesaid, for themselves and their successors, do covenant, promise, and grant to and with the said Sir Walter Mildmay, his heirs, executors, and administrators by these presents, in manner and form following; that is to say, that the said master, fellows, and scholars, and their successors, at all time and times hereafter for ever, shall and will permit and suffer the now vicar of Stanground, and his successors, vicars of Stanground for the time being, to have, receive, take, and enjoy all and singular the premises in Farcet aforesaid, above by these presents granted as aforesaid, without interruptions

interruption, let, or denial of them the said master, fellows, and scholars, and of their successors, or any of them, and without any rent or service to them, or any of them, therefore to be yielded or done. IN WITNESS whereof, to one part of these present indentures remaining with the said master, fellows, and scholars of *Emanuel* college aforesaid, the said Sir *Walter Mildmay* hath set his seal, and to the other part remaining with the said Sir *Walter Mildmay*, the said master, fellows, and scholars, have set their common seal, the day and year first above-written.

Walter Mildmay. (L. S.)

Sealed and delivered in the presence of

*Edmund Downynge,
William Swayne,
Lawrence Holmes,
John Rotsey,
T. Newett.*

Lease from Samuel Doughty to William Brownlow, dated 26 May, A. D. 1691. A. R. 3 Will. and Mary.

This Indenture made the 26th day of *May*, in the third year of the reign of our Sovereign Lord and Lady *William and Mary*, by the grace of God, of *England, Scotland, France, and Ireland*, King and Queen, defenders of the faith, &c. *annoque Domini* 1791, between *Samuel Doughty*, clerk, vicar of *Stanground*, in the county of *Huntingdon*, of the one part, and *William Brownlow*, Esq; lord of the manors of *Stanground* and *Parcet*, in the said county of *Huntingdon*, of the other part, WITNESSETH, that the said *Samuel Doughty*, for and in considera-

tion of the rent hereby reserved, and of the covenants hereinafter contained on the part of the said *William Brownlow*, his executors, administrators, and assigns, to be performed, and for divers other good causes and considerations him hereunto moving, **H A T H** granted, leased and demised, and by these presents **DO T H** grant, lease, or demise, unto the said *William Brownlow*, his executors, administrators, and assigns, **A L L** those his tithes and tenths of what nature or kind soever, due or belonging, or which at any time or times hereafter, during the term hereinafter mentioned, shall be arising, coming, growing, or renewing, and be due or belonging to him the said *Samuel Doughty*, as vicar of the vicarage of *Stanground* aforesaid, in, out, of, or for all that fen or fenny ground, called or known by the name of *Berkley's Lands*, and containeth by estimation nine hundred and forty acres, or thereabouts, and the other part thereof, lately inclosed or divided, containing by estimation one thousand and three hundred acres, or thereabouts; which said fen or fenny ground is situate and being in *Stanground* aforesaid, and *Fartet*, or in one of them, in the said county of *Huntingdon*, to have, hold, receive, take, and enjoy, the said tithes and premises to the said *William Brownlow*, his executors, administrators, and assigns, from the feast of the annunciation of the blessed virgin *Saint Mary* last past, before the date hereof, for and during the term, and unto the full end and term of five years, from thence next ensuing, and fully to be complete and ended, if the said *Samuel Doughty*, shall so long live, and continue vicar of the vicarage aforesaid, **Y I E L D I N G** and paying therefore yearly, and every year, during the term aforesaid, to the said *Samuel Doughty*, and his assigns, the yearly rent or sum of fifty pounds of lawful money of England, at the four

four feast days, or common rent days in the year, that is to say, the feast of the nativity of *Saint John the Baptist*, the feast of *Saint Michael the Archangel*, the feast of the birth of our Lord Christ, and the feast of the annunciation of the blessed virgin *Saint Mary*, by even and equal portions; the first payment thereof to commence and to be made upon the feast day of the nativity of *Saint John the Baptist*, next ensuing the date of these presents. A N D the said *William Brownlow*, for himself his heirs executors, and administrators, doth covenant, promise, and agree to and with the said *Samuel Doughty*, his executors and administrators, by these presents, that he the said *William Brownlow*, his executors, administrator, and assigns, or some of them, shall and will well and truly pay or cause the said yearly rent or sum of fifty pounds to be paid to the said *Samuel Doughty*, his executors, administrators, and assigns, at the days and times whereon the same is reserved, and to be paid as aforesaid, according to the reservation aforesaid, and the true intent and meaning of these presents. A N D the said *Samuel Doughty*, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree, to and with the said *William Brownlow*, his executors, administrators, and assigns, by these presents, that he the said *William Brownlow*, his executors, administrators, and assigns, paying the rent aforesaid, shall and may lawfully and peaceably have, hold, receive, take, and enjoy all and every the tithes and tenths arising, coming, growing, or renewing out of or for the said ten or fenny ground, called *Forest Farm*, or any part thereof, or out of, or for any of the lands and grounds there, or near thereunto, called or known by the name of *Berkley's Lands*, for and during the said term of five

years (if the said *Samuel Doughty* shall so long live; and continue vicar of the vicarage aforesaid) without any contradiction, claim, or demand whatsoever to the contrary, by or from the said *Samuel Doughty*, or by or from any person or persons whatsoever, lawfully claiming or to claim by, from, or under him the said *Samuel Doughty*, in any wife. AND LASTLY, it is declared and agreed by and between the said parties to these presents, that the said *Samuel Doughty* shall and will, during the term aforesaid, bear and pay all and all manner of duties, taxes, impositions, and assessments, as well public as private, which by authority of parliament, or by any parish rate, or otherwise, shall be due or payable, or be rated, taxed, or assessed to be paid by the said *Samuel Doughty*, or his assigns, or by the said *William Brownlow*, his executors, administrators, or assigns, for or in respect of the hereby demised premises, or the said vicarage, or any thing relating thereunto, and thereof and therefrom, shall and will from time to time, and at all times during the term aforesaid, save harmless, and keep indemnified the said *William Brownlow*, his executors, administrators, and assigns, of and from the same, and of and from the payment thereof, every or any part thereof; and in case the said *William Brownlow*, his executors, administrators, or assigns, be charged or forced to pay any such duties, taxes, or assessments, or any part thereof, at any time or times during the term aforesaid, that then he or they shall or may have and detain what he or they shall be so forced to pay out of the rent hereby reserved, any thing herein to the contrary notwithstanding. IN WITNESS whereof, the parties above-named have to these present indentures, interchangeably, set their hands

hands and seals, the day and year first above-written.

William (L. S.) Brownlow.

Scaled and delivered in the presence of

*G. Markham,
Joseph Smyth,
Charles Dighton.*

Lease from William Whitehead to Sir John Brownlow, dated May 26, A. D. 1751, A. R. 24 Geo. II.

This Indenture made the 26th day of *May*, in the twenty-fourth year of the reign of our sovereign lord *George the Second*, by the grace of God, of *Great Britain, France and Ireland*, King, defender of the faith, &c. and in the year of our Lord 1751, between the reverend *William Whitehead*, clerk, batchelor in divinity, and vicar of *Stanground*, in the county of *Huntingdon*, of the one part, and the Right Hon. Sir *John Brownlow*, Baronet, and Lord Viscount *Tyrconnel*, in the kingdom of *Ireland*, lord of the manor of *Stanground* aforesaid, and of *Farcet* in the said county of *Huntingdon*, and impropriate rector of the parish of *Stanground* aforesaid, and of all hamlets and titheable places belonging thereto, of the other part; WHEREAS Sir *Walter Mildmay*, Knight, chancellor of the *Exchequer* to Queen *Elizabeth*, of famous memory, being seised in fee simple of the manor of *Stanground*, in *Farcet* aforesaid, and of the rectory impropriate of *Stanground* aforesaid, (in which is comprehended the vill or hamlet of *Farcet* aforesaid), did, in or about the thirtieth year of the reign of the said Queen, give and
grant

grant unto the master, fellows, and scholars of *Emanuel* college, in *Cambridge*, IN TRUST for the vicar of *Stanground*, for the time being, the tithes of corn, grain, wool, lamb, and calf, coming and arising within the parish, town or hamlet of *Farcet* aforesaid, as and for an augmentation to the income of the said vicarage (excepting the tithes which should happen on the demesne lands of the said manor of *Stanground*, and other lands and tenements therein mentioned); AND WHEREAS within the said parish of *Stanground*, is a great fenn, commonly called *Farcet Fenn*, containing, by estimation, two thousand two hundred and forty acres, (little more or less), that is to say, nine hundred and forty acres, part thereof, commonly called *Barclay's Lands*, or *The Adventurers Lands*, which had been long before the year 1683, inclosed and divided, and the remaining one thousand and three hundred acres belonging to the said manors, or one of them, but which had been used time out of mind, until about the said year 1683, as a common pasture for the inhabitants of *Stanground* and *Farcet* aforesaid, and in which also the farmers and land-holders of the several towns of *Woodstone*, *Fletton*, *Haddon*, *Stibbington cum Sibson*, and *Waternewton*, in the said county of *Huntingdon*, claimed and enjoyed a right of common for their working cattle, *levant and couchant*, upon their respective tenements; AND WHEREAS part of the said great fenn lies within the said hamlet of *Farcet*, AND WHEREAS in or about the said year 1683, the said one thousand and three hundred acres, or thereabouts, of the said fenn, then lying in common as aforesaid, was, by virtue of the said statute, made in the fifteenth year of the reign of King *Charles* the Second, intituled, "An act for settling the draining of the
great

great level of the fenns called *Bedford Level*, divided into many parts, and allotted severally and respectively to the several persons having right of common therein, in manner above-mentioned; AND WHEREAS after such division divers disputes arose, and suits were commenced and prosecuted, between *William Brownlow*, Esq; father of the said Lord Viscount *Tyrconnel*, in whom by mesne conveyances, the said manors and rectory were then vested, and several of the vicars of *Stanground* aforesaid, which suits and controversies were at length compromised by agreement to grant to the said *William Brownlow* by *Joshua Ratcliffe*, batchelor in divinity, then vicar of *Stanground* aforesaid, a lease of all the tithes in the said fenn belonging to the said vicarage, by means of the said endowment, or otherwise howsoever, and by the said *William Brownlow's* accepting thereof in such manner as the same is hereafter granted and set forth; AND WHEREAS a lease was thereupon granted by the said *Joshua Ratcliffe*, to the said *William Brownlow*, by indenture, bearing date the 30th day of *May*, 1688, and after the death of the said *Joshua Ratcliffe*, another lease bearing date the 26th day of *May*, 1691, to the very same purport and effect as the said former lease was made from *Samuel Doughty*, clerk, then vicar of *Stanground* aforesaid, to the said *William Brownlow* for five years, if the said *Samuel Doughty* should so long live, and continue vicar of *Stanground* aforesaid; AND WHEREAS the said composition and agreement was found so advantageous, both to the rector and vicar aforesaid, that although no lease in writing was executed between the said parties, since the expiration of the last mentioned lease, yet the said agreement and composition hath been duly observed by and between the succeeding rectors and vicars
ever

ever since; and the said rectors have duly paid the said reserved rents, and enjoyed and continued the possession of the said tithes ever since, and still continue to do the same; AND WHEREAS it hath been advised and found expedient, that the said lease should be renewed by the said *William Whitehead*, the present vicar, to the said Lord Viscount *Tyrconnel*, the present rector, in manner hereinafter-mentioned: NOW THEREFORE THIS INDENTURE WITNESSETH, that the said *William Whitehead*, in confirmation of the said composition and agreement, and for and in consideration of the rents and covenants herein-after reserved and contained on the part of the said Lord Viscount *Tyrconnel*, his executors, administrators and assigns, to be paid and performed, and for divers other good causes and considerations him thereunto moving, HATH granted, leased and demised, and by these presents DOTH grant, lease and demise, unto the said *John Lord Tyrconnel*, his executors, administrators and assigns, ALL those his tithes and tenths of what nature or kind soever, due or belonging to him the said *William Whitehead*, as vicar of the vicarage of *Stanground* aforesaid, in, out of, or for all the said fenn or fenny ground, called or known by the name of *Farset Penn*, containing in the whole by estimation, two thousand two hundred and forty acres, or thereabouts, (be the same more or less), part whereof having been anciently divided, was lately called or known by the name of *Barclay's Lands*, otherwise the *Adventurer's Lands*, and containeth by estimation nine hundred and forty acres, or thereabouts, and is now in the tenure or occupation of the Right Honourable the Earl of *Lincoln*, or his under tenants, and the other part thereof, first inclosed or divided about the year of our Lord 1683,

as aforesaid, containing by estimation one thousand and three hundred acres, or thereabouts, as aforesaid, which said fenn or fenny ground is situate and being in the parish of *Stanground* aforesaid, and lies partly in the said hamlet aforesaid, in the said county of *Huntingdon*; TO HAVE AND TO HOLD, receive, take and enjoy, the said tithes, tenths and premises, to the said *John* Lord Viscount *Tyrconnel*, his executors, administrators, and assigns, from the feast of the Annunciation of the Blessed Virgin *Mary* last past, before the date hereof, for and during the term, and until the full end and term of fifteen years from thence next ensuing, and fully to be complete and ended, if the said *William Whitehead* shall so long live, and continue vicar of the vicarage aforesaid; YIELDING and paying therefore yearly, and every year during the term aforesaid, to the said *William Whitehead* and his assigns, the yearly rent or sum of fifty pounds, of lawful money of *England*, at the two most usual feast days, or common days of payment of rents in the year; that is to say, the feast of *St. Michael the Archangel*, next ensuing the date of these presents; AND the said *John* Lord Viscount *Tyrconnel*, for himself, his executors and administrators, doth covenant, promise and agree, to and with the said *William Whitehead*, his executors, administrators, and assigns, by these presents, that he the said *John* Lord Viscount *Tyrconnel*, his executors, administrators, and assigns, or some of them, shall and will well and truly pay, or cause the said yearly rent or sum of fifty pounds to be paid to the said *William Whitehead*, or his assigns, at the several days and times, and in such proportions and manner, as the same is reserved to be paid as aforesaid, according to the reservation aforesaid, and the true intent and meaning of

of these presents; AND the said *William Whitehead*, for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said Lord Viscount *Tyrconnel*, his executors, administrators and assigns, by these presents, that he the said Lord Viscount *Tyrconnel*, his executors, administrators or assigns, paying the rent aforesaid, shall and may lawfully and peaceably have, hold, receive, take, and enjoy, all and every the tithes and tenths, arising, growing, coming, or renewing, out of, or for the said fenn or fenny ground ground called *Farset Fenn*, or any part thereof, or out of or for any of the lands and grounds there, or near thereunto, called or known by the name of *Barclay's Lands*, for and during the said term of fifteen years, if the said *William Whitehead* shall so long live, and continue vicar of the vicarage aforesaid, without any contradiction, claim or demand whatsoever to the contrary, by or from the said *William Whitehead*, or by or from any person or persons whatsoever, lawfully claiming or to claim, by, from or under, or in trust for him the said *William Whitehead* in any wife; AND LASTLY, it is declared and agreed, by and between the said parties to these presents, that he the said *William Whitehead* shall and will, during the term aforesaid, bear and pay all and all manner of duties, taxes, impositions, and assessments, as well public as private, which by authority of parliament, or by any parish rate or otherwise, shall be due or payable, or be rated, taxed, or assessed to be paid by the said *William Whitehead*, or his assigns, or by the said *John Lord Viscount Tyrconnel*, his executors, administrators or assigns, for, or in respect of the hereby demised premises, or the said vicarage, or any thing relating thereunto, and thereof, and therefrom, shall and will from time

time to time, and at all times during the term aforesaid, save harmless and keep indemnified, the said Lord Viscount *Tyrconnel*, his executors, administrators and assigns, of and from the same, and of and from the payment thereof, every or any part thereof; and in case the said Lord Viscount *Tyrconnel*, his executors, administrators or assigns, shall be charged or forced to pay any such duties or assessments, or any part thereof, at any time or times during the term aforesaid, that then he or they shall or may have and detain what he or they shall be forced to pay out of the rents hereby reserved; any thing herein contained to the contrary notwithstanding. IN WITNESS whereof the said parties to these presents interchangeably have set their hands and seals the day and year [*first*, J. R.] above written.

William Whitehead, (L. S.)

Sealed and delivered in the presence of (being first duly stampd according to act of parliament)

John Forster,

The Eldred,

*The Respondent's * Case.*

The appellant applied, in *Michaelmas* Term, 1780, to the court of *Chancery*, praying that the verdict might be set aside, and that a new trial of the said issues might be granted; and the Chancellor having received Mr. Justice *Willes*'s report, the merits of the verdict were fully argued in the *Hilary* vacation following, and the arguments of the counsel, which took up four days, being closed on

* See the case of the plaintiff in this cause, under *Michaelmas* Term, 29 Geo. III.

5 *March* 1781, his lordship took time to consider of the objections urged against the verdict, and in the mean time required the whole of the written evidence on both sides produced at the trial (which was very voluminous) to be left with him, for his lordship's private examination, and *called upon the appellant's counsel to leave with him any title deeds or documents in the appellant's possession, tending to shew that the matters in question had not been fully investigated by the jury, or that any evidence capable, of throwing further light on the objects of inquiry, had not been laid before the jury.*

The Lord Chancellor, on 28 *May* 1782, delivered his opinion, declaring himself fully satisfied with the verdict (so far as it found for the *respondent*); his lordship therefore rejected the appellants' application for a new trial, and ordered that he should take nothing by his motion.

From this order the appeal is made, praying their lordships to reverse the same, and to direct a new trial of the said issues.

STATE of the EVIDENCE *produced by the* RESPONDENT *on the* TRIAL *of the issues.*

In support of his case under the *first* and *fifth* issues, he produced,

1. An endowment registered in the old register of the Bishop of *Lincoln*, preserved amongst the archives of the diocese, in the registry of *Lincoln*; this endowment is dated 11 *April* 1402, wherein, after assigning

assigning a mansion house, and thirteen * acres of land, in *Stanground*, to the vicar, the abbot and convent of *Thorney* make the following grant, viz.
 “ Item † habebit dictus vicarius, qui pro tempore fuerit,
 “ pro portione sua, in perpetuum, omnes fructus redditus et proventus, decimasque et oblationes universas ad
 “ eandem ecclesiam qualitercunque provenientes, et pertinentes; decimis garbarum cujuscunque generis, bladorum, fœnique ac lanæ, et agnorum et vitulorum (quotiens vitulus decimus in specie fuerit solvendus) ad
 “ eandem ecclesiam qualitercunque provenientium, nec
 “ non glebâ et manso rectoriæ ecclesiæ duntaxat exceptis;
 “ quæ ad religiosos hucque ut ipsius ecclesiæ proprietarios,
 “ in perpetuum pertinebunt salvis habitatione vicariis et
 “ portus ejusdem superius designat.”

2. A duplicate or ancient copy of the same endowment, found in the registry of the Bishop of *Lincoln*, at *Buckden*, in *Huntingdonshire*, on which appeared an indorsement in the following words,
 “ viz. † Ecclesia sancti Johannis Baptistæ, de *Stang-*
 “ *ground*,

* It should be twenty acres, viz. eight, seven, and five, according to the copy of the original endowment, set out by the appellant, as part of the appendix to his case, which see ante, p. 1021. J. R.

† This extract of the original endowment seems rather more correct than the last above mentioned copy in the appellant's appendix, but indeed neither of them is perfect, but much otherwise, as well as very inaccurately pointed; the reader will find that we have rejected the stopping, and availed ourselves of the respondent's as well as of the appellant's copy in our translation above, to which we refer the learned reader, that he may compare them. J. R.

‡ The appropriate church of *St. John the Baptist*, of *Stanground*, is taxed at xx l. the tithes hereof viii l.” The vicar of the parish church of *Stanground* shall receive all tithes, except tithes of corn, grain, and hay, of calves and lambs by composition and the injunction of *Lord Lincoln*;

“ ground, appropriat. taxatur ad xxi. inde decimæ
 “ viii l.” vicarius ecclesiæ parochialis de Stangrounde,
 “ percipiet omnes decimas præterquam decimas garbar.
 “ granorum et fœni vitulorum et agnorum per compo-
 “ sitionem et ordinationem decani Lincoln : tamen nuper
 “ dominus Johannes Kirketon, abbas, anno regni
 “ Hen. VI. 22do. augmentavit portionem dictæ vica-
 “ riæ conferendo eidem tertiam garbam decimis gra-
 “ norum in campis de Farshed ut de cetero nullatenus
 “ annumeret”

3. A passage from the appellant's second answer, admitting that the yearly sum of twenty-five pounds had been paid by the lord of the manors of *Stanground* and *Farcet*, for the time being, and accepted by the vicars for the time being, ever since the year 1640, up to *Lady-day* 1773, but denying the defendant's knowledge on what account the payment was made.

4. The respondent proved, by *Robert Bellamy* a living witness, the receipt, by the present vicar, of the small tithes throughout the parish of *Stanground*, except of the inclosed fenn lands, lying in that part of the parish which is in *Cambridgeshire*.

In the second, fourth, fifth, and sixth issues he produced,

First, an indenture dated 24 October, 30 Eliz. between Sir *Walter Mildmay*, Knight, Chancellor of

however, Lord *John Kirkton*, the abbot, augmented, in the twenty-second year of the reign of *Henry the Sixth*, the portion of the said vicarage, by conferring on the same the third of corn, with the tithes of grain in the fields of *Farshed*, so as not to reckon them in future.” *J. R.*

the *Exchequer*, &c. of the one part; and the master, fellows, and scholars of *Emanuel* college, of the other part; whereby, after taking notice (amongst other things) that the provision for the vicar of *Stanground* was not sufficient for his maintenance, and that Sir *Walter*, being proprietor of the rectory and patron of the vicarage, was minded to make such provision for him as is therein mentioned; the said Sir *Walter*, in consideration thereof, and for other the considerations therein mentioned, granted, bargained, and sold to the said master, fellows, and scholars,

1. The parsonage house and a close called *Parson's Croft*, and the glebe lands thereunto belonging, and

2. " All those his tithes of wool, lamb, and calf, yearly, and from time to time, coming, arising, and renewing within the parish, town, and hamlets of *Stanground* aforesaid, and *Farcet* in the said county of *Huntingdon* (except, and always reserving to the said Sir *Walter Mildmay* his heirs and assigns, all and all manner of tithes of wool, lamb, and calf, yearly, and from time to time, coming, arising, happening, or growing out of, for or by reason of the demesne lands and tenements of the said manor of *Stanground*, then in the occupation of *Henry Parkinson* or his assigns) and after reciting, that the then vicar, and his predecessors, had but only one third part of the tithe of * corn in *Farcet*, the whole in three parts being divided, and the proprietor or owner of the said parsonage of *Stanground* aforesaid, the other two third parts of the said tithe corn (of which two third parts, the said Sir *Walter* was seised in his de-

* It is very material to observe on this deed, that the portion of the tithe of corn is granted throughout the hamlet of *Farcet*, without the exception of any demesne or other lands.

mesne as of fee, as part of the said parsonage of *Stanground*) the said Sir *Walter*, for the considerations aforesaid, granted and confirmed unto the said master, fellows, and scholars, one fourth of all his said two third parts of all the said tithe corn, which from time to time should be coming and renewing within the said town, fields, or hamlet of *Farct* aforesaid (being part of the said rectory of *Stanground*), the which fourth part of the said two third parts, together with the said other third part of the said tithe corn there, *which the vicar of Stanground then had and enjoyed*, would amount together to a full moiety of all the tithe corn, renewing in the said town, fields, and hamlet of *Farct* aforesaid, and growing due to the parsonage or vicarage of *Stanground* aforesaid, in such sort as whereas the then vicar and his predecessors had but one third part of the said tithe corn in *Farct* aforesaid, the said master, fellows, and scholars, and their successors, and the said vicar and his successors, should have (their portions being laid out or taken together) *one moiety of all the said tithe corn in Farct aforesaid*; and the said Sir *Walter Mildmay* also granted to the said master, fellows, and scholars of *Emanuel* college,

3. All that the advowson, presentation, and rights of patronage of the vicarage of *Stanground* aforesaid (except and always reserved to the said Sir *Walter* and his heirs or assigns, all the rents and yearly profits reserved and limited to be paid for the said tithe corn, upon one lease for term of years, theretofore made of the said tithes, and other things, which the said *Parkinson* then had).

TO HOLD unto, and to the use of the said master, fellows, and scholars, and their successors for ever.

The

The college covenant with Sir *Walter* to present a fit and able clerk, and to permit and aid him in the enjoyment of the premises granted in TRUST for him.

Secondly, A deed-poll under the hand and seal of the said Sir *Walter Mildmay*, dated 9 April, 31 Eliz. whereby, after reciting that he had by indenture, dated 26 October, 30 Eliz. settled the rectory of *Stanground*, with all the tithes and hereditaments thereunto belonging (except all such lands, tenements, tithes, advowson, and hereditaments in *Stanground* aforesaid, and in *Farcet*, which he had granted to the master, fellows, and scholars of *Emanuel* college) to certain uses therein expressed, with power of revocation, the said Sir *Walter* resumes to himself, and revokes, and declares void the said settlement, as concerning * *the tithes of wool, lamb, calf, corn, and grain, within the town or hamlet of Farcet, and the fields and limits thereof, or any of them, and all sums of money, and other profits due or payable concerning the same, then or late parcel of the rectory of Stanground (other than the tithes of wool, lamb, calf, corn, grain, and other things arising from the demesne, lands, and tenements, of the manor of Stanground, and other lands, and tenements of the said Sir Walter, then or late in the tenure of Henry Parkinson, Michael Beale, John White, and Thomas Smith, or any of them by lease or at will).*

* In this deed there is a manifest mistake in revoking the uses of the settlement, as to the tithes of wool, lamb, and calves, as Sir *Walter* by the deed above stated had, previous to the date of the settlement, granted all those tithes to *Emanuel* college, and had not, at the date of the settlement, more than a moiety of the tithes of corn and grain in *Farcet* belonging to him.

Thirdly, An indenture dated 11 April, 31 Eliz. between the said Sir *Walter Mildmay* of the one part, and the said master, fellows, and scholars, of the other part, whereby, after reciting, that the said Sir *Walter Mildmay* had erected the said college, and had also endowed the same with divers lands, tenements, tithes and hereditaments, and other things for the maintenance thereof, and yet having great care and zeal for the establishment and continuance thereof, to the glory and honour of Almighty God, and setting forth his holy gospel by good and able preachers, and for the increase of living of and for the vicar of *Stanground* aforesaid, the said Sir *Walter Mildmay*, for the considerations aforesaid, gave, granted, and confirmed unto the said master, fellows, and scholars,

“ ALL * those the tithes of wool, lamb, calf, corn, and grain within the parish, town, or hamlet of *Farct* (except and reserving to the said Sir *Walter* and his heirs, all and all manner of tithes of wool, lamb, calf, corn, grain, and *other things* arising from the demesne, lands of the manor of *Stanground*, and all other lands and tenements then or late in the tenure of *Henry Parkinson*, *Michael Beale*, *John White*, and *Thomas Smith*, or any of them, by lease or at will, not being copyhold; TO HOLD to the said master, fellows, and scholars, and their successors for ever, UPON TRUST, that they should perform the covenants therein after contained.

* This grant purports to convey the tithes of wool, lamb, and calf (as well as corn), but the college being already possessed of those tithes, nothing passed by the present grant more than a moiety of the corn in *Farct*, which species of tithe was granted by the first deed throughout the hamlet of *Farct*, without the exception of any lands.

The college covenant, that they will at all times hereafter permit the vicar of *Stanground*, and his successors to have, retain, and enjoy all and singular the premises in *Farcet* thereby granted without the interruption of the said college, and without any rent or service to them therefore to be yielded or done.

EVIDENCE *in support of the RESPONDENT's CASE, under the third issue, viz. to prove the lands therein described to be situated within the hamlet of Farcet.*

The manors of *Stanground* and *Farcet* both belonged to the abbot of *Thorney*, and, upon the dissolution thereof, came to the crown; *Robert Smith*, who held the offices of bailiff and collector of the rents of both manors, under the abbot, was continued in those offices by the court of augmentation, in which court his accounts were passed annually upon oath and recorded.

Fifthly, An office copy of the roll of the said *Robert Smith's* first account of *Farcet*, for one year, ending at *Michaelmas* 32 Hen. VIII. wherein, under the title of *Farcet* collection, he accounts as follows, viz.

Under the title of “*manor and demesnes of FARCET.*”

For rents of assize of the free and customary tenants of the manor of	}	£.	s.	d.
<i>Farcet</i>				
		25	6	3

For

For the * farm of a pasture, called	£.	s.	d.
<i>Conquest</i> , lying within the limits of			
<i>Forest</i> , extending from the <i>Fowle</i>			
<i>Lake</i> to <i>Barret Water</i> , from <i>Con-</i>			
<i>quest Land End</i> to <i>Horsley Bridge</i> ,			
from <i>Horsley Bridge</i> to <i>Whittlesea</i>	5	14	8
<i>Dyke</i> , and from thence to a place			
called <i>Raven's Willow</i> , lot on lease			
to <i>William Cooper</i> , at			

Under the title of "*Agistamenta de FARCET*."

For thirty-three shillings and four-	}	1	13	4
pence, for the issues of a certain				
marsh called <i>Farcet Fenn</i> , payable				
by different persons, for the agist-				
ment of their cattle, within the same				
marsh, for the space of one year,				

Under the title of "Fees and outgoings," he craves the following allowances :

His fee as bailiff and collector, under	}	1	13	4
the deed of appointment of the ab-				
bot,				

For his fee as surveyor of the marshes or	}	3	6	8
fens of STANGROUND and FAR-				
CET granted him by deed of ap-				
pointment by the abbot,				

For stipend granted by the abbot, to	}	4	13	4
<i>Charles Barlow</i> , clerk, for officiating				
in the chapel of <i>Farcet</i> , for his life,				

There are two accounts for *Stanground*, for the same year, the one of the Taid *Robert Smith*, as bailiff of

* N. B. This farm appears to have been the whole of the land belonging to the lord of this manor.

the manor and collector of the rents ; the other of Sir *Edmund Walsingham*, Knt. as farmer of the demesne and other lands, occupied by the abbot at the dissolution.

Sixthly. An office copy of *Smith's* account of *Stanground* manor for the same year.

In which he accounts for the rents of assize, the rents of sundry farms in *Stanground*, in the occupation of himself and others, and the profits of the manor, but includes nothing arising from, or belonging to, *Farcet Fenn*.

Seventhly. An office copy of the roll, containing the account of the said Sir *Edmund Walsingham*, for the same year, as farmer of the demesnes rectory, and other lands, late in the hands of the abbot ; wherein, under the head of "*Terræ dominicales de Stanground*," he accounts for the rents of the farm of the scite of the manor, and sundry parcels of arable, meadow, and pasture in *Stanground*, and amongst other particulars,

" For twenty shillings for the farm of a certain marsh called *Farcet Farm*, in which farm the cattle of the tenants and inhabitants of *Stanground*, *Walter Newton*, *Haddon*, and *Woodstone*, of ancient custom, depasture, the † surplus of which marsh is let to farm as above."

† *N. B.* The circumstances of the surplus pasture (which the abbot had used with the *Stanground* farm, and therefore was let with the farm to *Walsingham*) appearing in this account, and in the subsequent lease to *Walsingham*, affords the only evidence relied on to prove the fenn to be parcel of *Stanground* demesne, and has given rise to the whole dispute respecting the situation of the fenn.

Eighthly.

Eighthly. An office copy of the roll, containing said *Robert Smith's* account of the manor of *Farcet*, for the fourth year of *Edward the Sixth*.

In this account, under the head of "*Agistimenta di Farcet*," is contained as follows, "** De xxxiii s. iv d. de exit cujusdam marisci vscat : Farcette Fenne levabil : de divers persons pro agistament : catall : fuor : infra eundem marisc : depascent : hoc anno debet hic non respondi eo quod dictus mariscus de Farcette fenne est parcell : ferme de Stanground dimisi : Edmundo Walsingham, milit. per indentur pro termino annorum et per ipsum ad usum suum recept ibidem parcell ejusdem respons : est Domino Regi inde virtut. indentur : supra dicti : ut ibidem appareat.*"

Ninthly. A parchment roll found amongst the papers produced by the appellant, pursuant to the decree, appearing to be a particular of the scite of the manor, rectory, and other lands in *Stanground*, for a lease thereof, to be granted to Sir *Edmund Walsingham*, made out by the officers of the court of augmentation, and subscribed by the judges thereof (of whom Sir *Walter Mildmay* appears to be one), and properly a record belonging to the augmentation office.

* Of thirty-three shillings and four-pence to be levied of the issues of a certain marsh called *Farcete Fenn*, from several persons, for the agistment of their cattle depastured within the same marsh ; he ought not to answer it this year, because the said marsh of *Farcete Fenn* is parcel of the farm of *Stanground*, demised to *Edmund Walsingham*, Knt. by indenture for term of years, and received by himself for his own use; parcel of which is to be answered to the lord the King, by virtue of the aforesaid indenture, as therein appears." *J. R.* Herein he states, as a reason, for the omission of the profits of the agistment of *Farcet Fenn* (hitherto annually accounted for) that Sir *Edmund Walsingham* had received them for his own use, under a lease of the farm of *Stanground*, in which the said fenn was included.

This

This particular contains a description of the farm of the scite of the manor of *Stanground*, and the other lands comprised in Sir *Edmund Walsingham's* first account, with separate rents annexed to each article, amongst which it enumerates.

<p>“ * <i>Firma cujusdam morisc ibidem vocat.</i> <i>Farceid Fenne in quo marisco catall. tenent. et inhabitant. de Stanground, Waternewton, et Woodstone sans nombre depast. surplusag. cujusquidam marisci spectat ad Dominum Regem ratione sursum reddit. nuper monasterii praedicti et valet communibus annis,</i></p>	<p>£. s. d. I 0 0</p>
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Tenthly. Another parchment roll, found amongst the papers produced by the appellant, containing “ *A particular of the scite and demesne lands of the manor of Stanground.*” It is subscribed by *Christopher Smith*, clerk of the pipe, and appears to be a record properly belonging to the pipe office ; it is intituled, “ *Parcel of the possessions of the late monastery of Thorney, late assigned to our Lady Elizabeth, now Queen of England,*” and under the head of the “ *scite and demesne lands of the manor of Stanground ;*” it contains a particular description of the farm of the scite of the manor, and the several parcels of lands belonging thereto ; *but no mention is made therein of Farceid Fenn, or any profit arising therefrom ; or a de-*

* The farm of a certain marsh there called “ *Farceid Fenn,*” in which marsh the cattle of the tenants and inhabitants of *Stanground Waternewton*, at *Woodstone*, are to be depastured without number ; the surplus of which marsh belongs to the lord the King, by means of a surrender of the late monastery aforesaid, and is worth one year with another. *J. R.* In this the surplusage of the pasture of the fenn is enumerated by the same description, as in *Walsingham's* account, but the profits of the agistment are not noticed ; and the whole of the rents (including the above article) of the *Stanground* farm amounts to thirteen pounds eight shillings.

duction of the twenty shillings (charged for it in the preceding particular) made from the rent.

The premises described are mentioned to have been demised (*among other things*) to *Edmund Walsingham*, Knt. by letters patent, dated 20 Aug. 2 *Edward VI.* for twenty-one years, and to be then in the tenure of *Sir Walter Mildmay*, at the rent of twelve pounds eight shillings."

Examined by *Christopher Smith*, clerk of the pipe.

Eleventhly. An office copy of a record in the augmentation office, containing the particular made out for the grant of the manor of *Farcet* to *Sir Walter Mildmay*, in fee, wherein,

Under the title of "Manor of *Farcet*, in the county of *Huntingdon*." it describes the following articles:

	£.	s.	d.
Rents of assize of the free and customary tenants	25	6	3

A farm of one pasture, and fishery, called *Conquest*, lying at *Farcet Bridge*, between *Raven's Willow*, and *Pockets Holme*, with the fishery and pasture in *Conquest Close*, together with all willows growing upon or round the said pasture, from *Fowle Lake* to *Farcet Water*, together with the profits of fishing and fowling within the same limits, with the fishing in the water of *Farcet*, from *Conquest Land End* to *Horsely Bridge*, and *Whittlesea Dyke*, and from thence to a place called *Raven's Willow*, let on lease to *William Cooper*, at the rent of

5	14	8
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Profits of courts <i>communibus annis</i>	£.	s.	d.
	1	6	8

Under the head of reprisals it states,

The fee of the bailiff <i>per annum</i>	1	13	4
Fee of the surveyor of the marches } granted him for life ———— }	3	6	8
Stipend of the chaplain officiating in } the chapel of <i>Farcet</i> ———— }	4.	13	4

Twelfthly. Office copy of the grant from the Crown of the manor of *Farcet* to Sir *Walter Mildmay*, which bears date 30 *June*, 7 *Edw.* VI. whereby the said manor of *Farcet*, and the farm described in the preceding particular, are granted to the said Sir *Walter Mildmay* in fee.

Thirteenth. An office copy of a lease from the Crown of the manor and rectory of *Stanground* to Sir *Walter Mildmay*, bearing date 25 *August*, 4 *Eliz.* from *Michaelmas* then next for sixty years, in which no mention is made of *Farcet Farm*.

Fourteenth. An office copy of a decree of the dutchy court of *Lancaster*, made in *Easter* term, 7 *Eliz.* in a cause between the Queen and Sir *Walter Mildmay*, in consequence of a dispute which had arisen between Sir *Walter* and the Queen's fishers, in the water called *Whittlesea Mear*, (which was parcel of the dutchy) relative to the boundary between *Ear-cet Fenn* and the *Mear*.

This decree recites, that upon the certificate of the depositions taken before the commissioners, under a commission issuing out of the court for the inquiry of the true boundary and division "of a certain

tain water of her Majesty, called *Whittlesea Meer*, in the county of *Huntingdon*, from and between a pasture of Sir *Walter Mildmay*, Knt. called *Farcet * Fenn* in the said county, as also, whether the said *Whittlesea Meer* had at any time consumed, wasted, surounded, worn away, or won any part of the said pasture," it did plainly appear, that the ancient and true boundaries dividing and separating the said *Whittlesea Meer* from the said pasture were two, the one called *Ayrlmynde's Hill*, and the other *Falce Tubbe*, within which boundaries the said water called *Whittlesea Meer*, had of late years consumed and worn away part of the said pasture; forasmuch therefore, as upon the deliberate hearing and perusing the said depositions and good advisement therein taken by her grace's chancellor and counsel of the said court, it appeared manifestly, that so much of the said water as was adjoining to the said pasture, and within the said boundaries, was the very right and inheritance of the said Sir *Walter* as parcel of the said pasture.

It was therefore decreed and adjudged, that the said Sir *Walter*, his heirs and assigns for ever, should and might lawfully have, hold, and occupy, to his and their own proper use, so much of the said water, as was within and between the said two boundaries and the said pasture as parcel of the same pasture, with the fish and several fishing in the same water, at all times at his and their pleasure, without let, molestation, or intermeddling of any other person or persons.

* This proves beyond contradiction, that the fenn was then known and admitted to be parcel of the manor of *Farcet*; for Sir *William Mildmay* had, at the period in question, no more than a lease for years of the manor farm of *Stanground*, and could therefore lay claim to the free-simple and inheritance of the soil of the fenn and the fishery (given him by this decree) in no other right than as lord of the manor of *Farcet*.

Fifteenth. The respondent next read a passage from the appellant's second answer, wherein the appellant says, " that he has been informed, and believes, that at some time in or about 9 *Elix.* an * agreement was made, the said Sir *Walter Mildmay* and some lords of the manors, who claimed a right of common in the said fenn, and that by such agreement four hundred acres of the said fenn, adjoining to *Conquest Close*, were to be held in severalty by the said Sir *Walter Mildmay*, his *heirs and assigns*, and believed the said four hundred acres did, from the time of such agreement, become the separate estate of the said Sir *Walter Mildmay*, his *heirs and assigns*."

Sixteenth. An office copy of the grant, dated 18 *March*, 30 *Elix.* from the Queen to Sir *Walter Mildmay*, of the reversion in fee, of the manor advowson and rectory of *Stanground* by the same description, as is contained in the said lease of 25 *August*, 4 *Elix.*

Seventeenth. A lease dated 16 *Jan.* 1659, from *Oliver Saint John* to *John Bellamy*, of sundry parcels of the lands allotted out of *Farcet Fenn*, to the *Adventurers*, which are therein described *to be situated in Farcet*.

Eighteenth. An indenture dated 26 *May*, 1691, from *Samuel Doughty*, vicar of *Stanground* to *William*

* By the terms of the agreement, the *fee-simple* of the soil and herbage of the fenn, is again recognised to have been in Sir *Walter Mildmay*, though he could claim it in no other light, than as parcel of the manor of *Farcet*; the appellant refused to produce the original agreement, from whence his answer must have been stated, sheltering himself under the pretext of its being a title-deed.

Brownlow, Esq; lord of the manor of *Stanground*, and *Farcet*, whereby the said *Samuel Doughty* demises to the said *William Brownlow*,

ALL those tithes, of what nature or kind soever, due or belonging to him as vicar of the said church, in, out of, or for all that fenn or fenny ground called or known by the name of *Farcet Fenn*, containing in the whole, by estimation, two thousand two hundred and forty acres, or thereabouts, part whereof having been anciently divided, was then called *Berkley's* lands, and contained by estimation, nine hundred and forty acres, or thereabouts, and the other part thereof, then lately inclosed or divided, containing by estimation one thousand and three hundred acres, which fenn is situated and being in *Stanground* aforesaid, and *Farcet*, or one of them."

TO HOLD from *Lady-day* then last, for five years, if the said *Samuel Doughty* should so long live, at the yearly rent of fifty pounds, payable quarterly.

Nineteenth. An indenture of lease, dated 26 May, 1751, between *William Whitehead*, clerk (vicar of *Stanground* aforesaid) of the one part, and the right honourable Sir *John Brownlow*, Lord Viscount *Tyrconnel*, lord of the said manor, and *impropriate rector of the said parish*, of the other part, whereby, after reciting Sir *Walter Mildmay's* grant of the tithes of corn, grain, wool, lamb, and calf, in *Farcet*, and taking notice, that within the parish of *Stanground*, was a great farm, commonly called *Farcet Farm*, containing by estimation, two thousand, two hundred and forty acres, viz. nine hundred and forty acres, part thereof, called *Berkley's*, or the *Adventurer's Lands*, which had been long before the year

1683; inclosed and divided, and the remaining one thousand and three hundred acres belonging to the said manors or one of them, but which had been used time out of mind, until about the said year 1683, as a common of pasture, for the inhabitants of *Stanground* and *Farcet* aforesaid, in which also, the farmers and land-holders of the several towns of *Woodstone*, *Fletton*, *Haddon*, *Stibbington cum Sipsen*, and *Water Newton*, in the said county of *Huntingdon*, claimed and enjoyed a right of common for the working of cattle, *levant and couchant*, upon their respective tenements; and reciting, that part of the said farm lay within the hamlet of *Farcet*, and that in or about the said 1683; the said one thousand and three hundred acres; or thereabouts, of the said farm, then lying in common as aforesaid, were by virtue of the statute made 15 Car. II. ch. 17. intituled, “An act for settling the drainage of the great level of the fens, called *Bedford Level*,” divided into many parts, and allotted severally and respectively to the several persons having right of common therein. AND RECITING, that after such division, divers disputes arose, and suits were commenced and prosecuted between *William Brownlow*, Esq; father of the said Lord Viscount *Tyrconnel*, (in whom by messrs conveyances the said manor and rectory were vested) and several of the vicars of *Stanground*, which suits and controversies were at length compromised by agreement, to grant to the said *William Brownlow* by *Joshua Ratcliffe*, B. D. then vicar of *Stanground* aforesaid, a lease of all the tithes in the said fenn, belonging to the said vicarage, by means of the said endowment, or otherwise howsoever, and by the said *William Brownlow* accepting thereof, in such manner as the same is therein after granted and set forth. AND RECITING, that a lease was thereupon

15 Car. 2 chap.
27.

granted by the said *Joshua Ratcliffe* to the said *William Brownlow*, by indenture bearing date 30 May, 1683, and after the death of the said *Joshua Ratcliffe*, another lease bearing date 26 May, 1691, to the very same purpose and effect, as in the said former lease was made, from *Samuel Doughty*, clerk, then vicar of *Stanground*, aforesaid, to the said *William Brownlow*, for five years, if the said *Samuel Doughty* should so long live, and continue vicar of *Stanground*. AND RECITING, that the said composition and agreement was found so advantageous, both to the rector and vicar aforesaid, that although no lease in writing was executed between the parties since the expiration of the said last mentioned lease, yet the said agreement and composition had been duly observed by and between the succeeding rectors and vicars ever since, and the said rectors had duly paid the said reserved rent, and enjoyed and continued in the possession of the said tithes ever since, and still continued to do the same. AND RECITING, that it had been advised and found expedient, that the said lease should be renewed by the said *William Whitehead* the then vicar, to the said Lord Viscount *Tyrconnel*, the then rector, in manner aforesaid; IT IS WITNESSED, that the said *William Whitehead*, in confirmation of the said composition and agreement, and for and in consideration of the rent and covenants thereafter reserved, &c. and for other good causes, &c. granted, leased, and demised unto the said Lord Viscount *Tyrconnel*,

ALL those his tithes and tenths of what nature or kind soever, due or belonging to him the said *William Whitehead*, as vicar of the vicarage of *Stanground* aforesaid, in, out of, or for all that the said tenn or fenny ground, called or known by the name
of

of *Farcet Fenn*, containing in the whole, by estimation, two thousand two hundred and forty acres, or thereabouts (be the same more or less), part whereof having been anciently divided, was lately called or known by the name of *Barclay's Lands*, otherwise *Adventurer's Lands*, and containeth, by estimation, nine hundred and forty acres, or thereabouts, and was then in the tenure or occupation of the Right Honourable the Earl of *Lincoln*, or his under tenants, and the other part thereof, first inclosed or divided about the year 1683, as aforesaid, containing by estimation thirteen hundred acres, or thereabouts, as aforesaid; which said fenn or fenny-ground is situated and being in the parish of *Stanground*, and lies partly in the hamlet of *Farcet*, in the said county.

TO HOLD the said tithes, tenths, and premises, to the said *John Lord Viscount Tyrconnel*, his executors, administrators and assigns, from *Lady-day* then last, for the term of fifteen years, if the said *William Whitehead* should so long live, and continue vicar of *Stanground*, at the yearly rent of fifty pounds.

*Copies of Court * Rolls of the Manor of Farcet, found in the Parish Chest of Stanground.*

Twentieth. Sir *Walter Mildmay*, Lord. Admission of *Richard Olde*, dated 13 September, 5 & 6 Ph. & Mar. to one college and two acres of land, with the appurtenances in *Farcet*; and one eighth rood in *Ring's Delfe*, late in the tenure of *Thomas Astelyn*, on the surrender of *William Olde*, his father.

* N. B. The appellant refused to produce or permit the respondents to inspect his court rolls,

Twenty-first. Sir *William Mildmay*, Lord. Copy of licence, dated 16 October, 30 Eliz. to *Thomas Andrew*, to let *William Redley* his customary tenements in *Farcot*, viz. one messuage and one yard half land, with the appurtenances, two doles of meadow in *King's Delfe*, and half an acre of meadow in *Milby*, one barn called the *Forswath*, and seven lots of meadow lying in *South Meadow*, for the term of six years.

Twenty-second. Earl of *Westmoreland*, Lord. Admission dated 18 September, 11 Jac. I. of *Charles* and *Joseph Andrew*, to one quarter of arable land, one hog yard and barn, the moiety of one close, one dole, and the third part of *Eight Rood*, in *King's Delfe*, three lots and half in *South Meadow*, the third part of two hols in *South Meadow*, the third part of two hols in *Bell Hye*.

Twenty-third. Dowager Lady *Westmoreland*, Lady. Admission dated 27 September, 12 Car. I. of *Robert* and *Charles Elmer*, to one messuage, and one eight rood in *King's Delfe*.

Rates and Assessments.

6 Dec. 1681.

Twenty-fourth. The church-warden's assessment of *Farcot* for the year 1681, whereby it appears, that *New Meadow*, *South Meadow*, *Milby*, the tithes of *King's Delfe* and *Milby*, the *Eight Roods*, the *Lord Berkley's* or *Adventurer's Lands*, and *Beale's Cotes*, were then rated to *Farcot*.

Twenty-fifth. Land-tax duplicate for *Farcot*, for the year 1692, 11 Wil. & Mary, wherein *William Brownlow*, Esq; is rated to *Farcot* for his tithes of the

the *King's Lands, King's Delfe, Milby, and the late inclosed fenn.*

Twenty-six, seven and eight. The like for the years 1728, 1729, and 1730, wherein the vicar is rated for the tithes of the *field and composition money, and for Conquest Lands, King's Lands, and the great fenn, small tithes, and glebe land.*

Twenty-nine. The like for 1739, wherein the tithes of *King's Delfe, &c.* are expressed.

Thirty-one, two. The like for 1749, 1750, 1753, wherein *Beale's Cote* is rated by name.

Thirty-three, four, five. Land-tax duplicates for *Stanground*, for the years 1692, and 1730, wherein part of the *fenn* appears to be rated.

Parole Evidence.

The respondent lastly proved, by the testimony of living * witnesses, the boundaries of *Farcet Fenn*, as herein before described, and that *King's Delfe, Conquest Lands, Milby, New Meadow, Beale's Cote, and the Pingles*, lay within, and were considered as parcel of it.

That *Farcet* had separate parish and civil officers, viz. church-wardens, overseers, constable, and surveyor of the high-ways; that it maintains its own poor, and is separately rated to the land-tax.

* N. B. The boundaries of the *fenn*, as described in the perambulation, stated in the old depositions (after mentioned and produced in evidence by the appellant), exactly agree with those mentioned by the living witnesses.

Thirdly. That the inhabitants of *Conquest Land* serve all parochial and civil offices for *Farcat*, and not for *Stanground*.

Fourthly, That *Conquest Land*, *King's Delfe*, *Milby*, *New Mead*, *Beale's Cote*, and the *Pingles*, and the fishery in *Whittlesea Meer*, are rated to *Farcat*.

Fifthly, That the drove ways throughout the fenn are under the care of the *Farcat* surveyor, and are repaired by the inhabitants of *Farcat* only, and that the inhabitants of ancient messuages in *Farcat*, enjoy the exclusive privilege of keeping their hogs in the drove ways.

Sixthly, That *Oakey Dyke*, the north-east boundary, (upon which *King's Delfe* adjoins) so far as it divides *Farcat's King's Delfe* from *Whittlesea King's Delfe*, is scoured as follows, *viz.* about half way by the owners in *Whittlesea*, and the remainder by the owners of ancient messuages, which formerly had rights of common in the open farm, and that no part of the dyke is scoured by the owners of *King's Delfe*, which lies next it.

State of the Evidence produced by the Appellant on the Trial.

The defence set up at the trial by the appellant, (exclusive of the objections taken to the legal validity of the grants, and to the evidence produced by the respondent) was, *that the question in issue had been already repeatedly tried, and conclusively determined against the vicar, who ought not therefore to be permitted to revive claims against the tenor of their decisions, and he produced in evidence,*

The record of a judgment in the court of *Common Pleas*, as of *Hilary Term*, 21 & 22 *Car. II.* in an action brought by *Charles Earl of Westmoreland*, as impropriate rector of *Stanground*, against *John Mawley*, for fifteen pounds, for treble value of the tithes of grain, oats and malsyn, of twenty-seven acres of land in his occupation; which lands in the declaration are described to be situated within the parish of *Stanground*, and the boundaries, limits, or titheable places thereof; the verdict was found for eight pounds two shillings for the plaintiff, and for the residue of the fifteen pounds for the defendant,

The appellant's counsel alledged, that the lands, for the tithes whereof this action was brought, were parcel of the *Adventurer's Lands* (then called the *King's Lands*) and that the action was in fact defended by the vicar; but nothing appearing upon the record to warrant that assertion, he attempted to prove it in the following manner:

On December 2, 1684, *Montague Cholmley*, Esq; and *William Brownlow*, Esq; an infant, the then impropriator of the said rectory (by the said *Montague Cholmley*, as his next friend and guardian) exhibited their bill in *Chancery* against the master, fellows, and scholars of *Emanuel college*, and Doctor *James Wolfenden*, then vicar of *Stanground*, charging the defendants with intent to stretch the grants of Sir *Walter Mildmay* beyond their true intent, and with setting up a claim to tithes arising from sundry of the excepted lands, and the tithes of corn in certain lands, situated in *Stanground*, and out of the hamlet of *Farcet*, that the boundaries and identity of the demesne and excepted lands would be lost, unless the plaintiffs were permitted to record and perpetuate their evidence

evidence thereof, and that the defendants threatened to commence actions at law against plaintiff's tenants, for the recovery of tithes, never before claimed by, or known to be due to, the vicar; and therefore praying, that the defendants might answer the bill, and that the plaintiff's proof of the matters aforesaid might be taken and perpetuated.

To this bill the defendants appeared, whereupon the plaintiffs immediately obtained an order and a commission to examine their ancient witnesses *de bene esse*, which was executed *ex parte*, (the defendant not joining therein), and the depositions of a great number of witnesses were taken; but before it was returned, and *before any answers were put in* to the bill, Dr. Wolfenden died, and the college having shortly afterwards presented John Ratcliffe to the said vicarage, on November 4, 1685, the said plaintiffs filed a bill of revivor and supplement against him, stating the former proceedings, and praying, that the plaintiffs might have the benefit of the testimony of such of the witnesses, examined in the life-time of Dr. Wolfenden, *who should not live to be again examined in ordinary course*, and that the defendants might discover the particulars of the tithes they claimed.

The defendant Ratcliffe afterwards put in his answer, stating the grants, and his claims under them, and that *he hoped to prove that divers large fenny or marsh grounds lay within the hamlet of Farcet*, and admitting that he brought several actions, in the name of the master, fellows, and scholars of Emanuel college, against William Bellamy, Edward Dawkins, John Mason, and John Brookes, which he conceived justly to belong to him.

Plaintiffs *never examined their witnesses in chief, or proceeded further in the cause, although both Mr. Brownlow and the vicars lived many years afterwards.*

The appellant produced, *and relied on*, the depositions *thus taken*, as evidence for him on the present trial; and in order to prove that the record of the judgment above-mentioned, respected the tithes of parcel of the *King's or Adventurer's Lands*; he read from the said depositions the following passages, *viz.* the deposition of *Robert Coveney*, to the eleventh interrogatory, folio 34, who says, "That about fourteen years before the time of his * examination, to the best of his remembrance there was a trial at common law, between *Charles Earl of Westmoreland*, plaintiff, and one *Morley* and † *others, tenants to the " King's Lands,"* defendants; at which trial the said Earl obtained a verdict for the tithes of the said lands, the deponent being present thereto, and that the said Earl was, at the time of the said trial, *lord and owner of the said manor of Stanground*; and says, he has heard and believes, that there was a private composition made between the *late Lord Berkley* (or his agents) then *lessee of the said lands*, and *William Forbes*, then *vicar of Stanground* aforesaid, concerning the payment of these tithes."

Deposition of *William Bellamy* to the same interrogatories, folio 159, says, "He remembers an action at law brought by the said Earl of *Westmoreland*, against one *John Morley*, defendant, and *Edward*

* The examination of the witnesses was in 1685.

† The verdict in question was against *Morley* only.

Dawkins, for their non-payment of *all* their tithes growing and renewing upon parcels of the lands called "*King's Lands*," to which they were then tenants; and that the same was tried at *Huntingdon* assizes, when a verdict was had against the said *Morley** and *Dawkins*, for the said Earl, and that one *Mr. Maurice Cole*, on the behalf of those defendants (then agent to the said Lord *Berkley*) paid the treble damages given by the said verdict to the use of the Earl; which † action was tried, to the best of the witness's remembrance, about seven years since."

The appellant next produced the record of an issue, as of *Hilary Term*, 34 & 35 *Car. II.* in an action in the court of *Common Pleas*, brought by the master, fellows, and scholars of *Emanuel college*, against *Edward Bellamy*, for thirty-six pounds, the treble value of the tithes of corn, oats, and hay, of twenty-six acres of land, and thirty acres of pasture, in the vill of *Farcet*, in his own occupation, the declaration stating the plaintiff to be *impropriator of the tithes of grain and hay arising out of the said lands*.

The roll contained no entry of any judgment; but the appellant's counsel alledged, that the plaintiffs were nonsuited; and, as evidence of a judgment of nonsuit, produced the copy of an entry of the name of the cause in the prothonotary's book, intituled, "*specialia judicia*;" but the entry does not express what the judgment was, nor whether for the plaintiffs or defendant, or indeed whether there was any judgment at all.

* The verdict in question was against *Morley* only.

† There is no proof that the then vicar was privy to, or had notice of this action; certainly he was not privy to it, if any such action was really tried.

In further proof of the nonsuit, he read, from the depositions before-mentioned, the evidence of *William Bellamy*, to the twelfth interrogatory, folio 165, who says, "That about two or three years past, there was an action at common law, commenced by the vicar of *Stahground*, in the names of the master, fellows, and scholars of *Emanuel college*, against *Edward Bellamy*, gentleman, for his non-payment of his tithes of *New Meadow*, and the tithe *oats of King's Delf*; which said action being tried at *Huntingdon*, the said plaintiffs were nonsuited, upon good evidence.

The next evidence produced by the appellant, was the record of a judgment of * nonsuit in the court of *Common Pleas*, in *Hilary Term*, 1 & 2 Jac. II. in an action brought by the said master, fellows, and scholars of *Emanuel college*, against *William Bellamy* of *Farset*, for eighteen pounds, the treble + value of the tithes of *oats* of twenty acres of land in the vill of *Farset*, in the defendant's occupation.

The remainder of the evidence produced by the appellant, consisted of the depositions of the other witnesses taken under the said commission, which went to the several points following :

* *N. B.* The appellant contended, that the form of the entry proved the nonsuit to have been after evidence given on both sides; but, this turned out to be a misapprehension, the judgment being in the common form of every nonsuit.

† *N. B.* It is observable, that the master, fellows, and scholars, were possessed of the legal estate of two third parts only of the said tithes, which was a sufficient ground of nonsuit, in an action brought for the treble value of the whole, upon a *penal statute*.

First,

First, To prove that the tithes of grain and hay in the meadows of *King's Delfs* and *Milby*, for many years past, and the tithe of corn of the *Adventurer's Lands*, since the drainage had been usually paid to the impropiator, and that the tithe of coleseed, hemp and flax, and all other small tithes, had been paid to the vicar, and that *New Meadow* paid no tithe; but that an acre thereof had been many years set out to the impropiator in lieu of tithe.

Secondly. To prove sundry perambulations of the parish of *Stanground*, in which it appeared, that when the inhabitants of *Stanground* arrived at *Farcet Fen*, the inhabitants of *Farcet* joined them, and they proceeded together round the whole of the boundary of the fenn, described in the map * annexed, and that disputes happened when the *Farcet* people attempted to perambulate the same alone.

Thirdly. That the courts-leet of *Stanground* had occasionally took cognizance of the offence, committed by commoners in *Farcet Fen*, before the inclosure thereof.

Fourthly. That before the drainage of the said fenns, several drifts of the cattle of the commoners therein, had been made by the assistance of the inhabitants of *Stanground* and *Farcet*, to the burystead-yard of *Stanground*, where they were detained till the owners paid their acknowledged pence to the lord, and from this circumstance the witnesses say, they

* This map, taken from a copper-plate, is prefixed to the respondent's case in this appeal, to which we must refer the reader, not having an opportunity of procuring an engraving of it for the work. J. R.

believe the soil of the fen belonged to the lord of the manor of *Stanground* as parcel of that manor.

Evidence produced by the Respondent in reply.

The judge having over-ruled the objection taken by the respondent's counsel to the admissibility of the above depositions as evidence, and having permitted the appellant to read them, the respondent read out of them such passages as tended to corroborate his own title, by proving the payment of tithes to the vicar, viz.

Alice Foster, to the tenth and eleventh interrogatory, folio 86.

"Who proved that the tithes of grain and hay of the *Adventurers* lands were several years after the drainage, taken by the owners and occupiers of those lands, by virtue of a composition of twenty-five pounds *per annum*, paid by Lord *Berkley* and his agents to *William Forster*, then vicar of *Stanground*."

Robert Coventy to the fourteenth interrogatory, folio 38.

"Proved that the vicar had, to his knowledge, for twenty years past, and upwards, received all tithe of grain within the fields of *Farcet*, together with the small tithes of *Stanground*, and a composition of twenty-five pounds yearly, paid by the lords of *Stanground* and *Farcet*, for all their fenn or marsh grounds belonging to either or both manors."

Joseph Bulkely to the eleventh interrogatory, folio 229.

"Proved

“ Proved an agreement made three years before, between the agents of *Lady Berkley*, with *Dr. Wolfenden* then vicar, for thirty-two pounds *per annum*, for all tithes of the *King's Lands*, lying in *Farcet Fenn*. ”

Richard Jennings to same, folio 135.

Say, that *after* the trial between the impropiator and *Lord Berkley's* tenants, there was a private contract made between *Lord Berkley's* agent and the vicar, for twenty-five pounds *composition*, for all tithes of grain on the *King's Lands*.

The deposition of *twelve* other witnesses, *viz.*

1. *Robert Chesham*, folio 112.
2. *Richard Jennings*, folio 137.
3. *Robert Cousney*, folio 37.
4. *Kerby*, folio 40.
5. *Arney*, folio 11.
6. *Pearson*, folio 56.
7. *William* Bellamy*, folio 159.
8. *Hardy*, folio 3.
9. *Nailer*, folio 61.
10. *Annabules*, folio 103.
11. *Hunt*, folio 14.
12. *Meyles*, folio 121.

Who proved, that the tithes of wood, lamb, milk, calf, pigs, hay, coleseed, hemp, and all other small tithes, of what nature or quality soever, throughout *Stanground* and *Farcet*; and the tithe of corn in the

* *N.B.* *Robert Bellamy*, one of the witnesses examined on the trial for the respondents stated, that part of the *King's Delf* lay in *Stanground*, being rated there, he believed about sixty doles; this evidence alone gave occasion to the exception in the verdict on the third issue

Fields of *Parcet*, had been constantly paid to the vicars of *Stanground*.

OBJECTIONS urged by APPELLANT, in support of his motion for a NEW TRIAL.

To the verdict found upon the several issues in favour of the respondent it was objected generally,

First, That the evidence offered on the part of the respondent, and admitted by the judge upon the trial, was in many respects, inadmissible in law, and ought not to have been received.

Second, That the conclusion drawn by the jury, is not warranted by the evidence.

To the evidence produced in support of the vicar's claim to the several *Species* of tithes under the first issue, it was objected, that the original endowment itself ought to have been produced, and that the copy of it alone was not sufficient, and ought not to have been received.

A N S W E R.

It is not very easy to understand what is meant by this objection, but it is supposed to be this, that the instrument of endowment under the seal of the abbot and convent ought to have been produced; if this be the meaning, the answer is,

That such instruments of endowment are at this time very rarely to be found, that for the sake of preserving such endowments, it has always been usual

Copies of endowments, considered as originals. See ante 702, 703.

to enter them in the registry of the bishop of the diocese, and that such entries in the bishop's registers have always been considered as originals, and received as such in evidence, without objection, in all courts of justice; if the two entries produced in the present case from the two registers of the bishop of the diocese were neither of them to be considered as originals, yet as not any original is known to exist, they ought to be received as copies, deriving their authenticity from the places, in which they are found.

O B J E C T I O N.

It is further objected, that the exceptions of the several *species* of tithes in the first issues, ought to have been extended to the tithe of wood, [*wood*, J. R.] as included under the word *garba*, and to the tithe of agistment as included under the word *bladum*, and that in that respect the finding is wrong.

But the respondent humbly insists, that the sense in which the jury have understood those words is the usual and common import of them, that *garba* properly means a sheaf or bundle of corn, and is applicable to corn only; *bladum* all kind of grain in the blade, and that such is the sense in which they have been taken by old writers upon these subjects; and it is observable, that in the indorsement upon the copy of the endowment found in the registry at *Buckden* (by which the vicar is further endowed with the third of the tithe corn in *Fareest*) the word *garba* is used, which can only be applicable to sheaves of corn; in confirmation of these endowments, and of this plain sense and import of the words, evidence was given of the vicar's having always received

ceived the small tithes in general throughout the parish, without any exception of wood [*wood*, J. R.] or agistment.

O B J E C T I O N S.

To the finding upon the second issue it is objected,

First. That the grants of Sir *Walter Mildmay* are void in law; as being within the statutes of *mortmain*.

Second. That the finding of the jury is not warranted by the words and meaning of the grants.

Third. That there ought to have been an exception for such part of *Stangrood* as lies in the county of *Cambridge*, the grant mentioning the county of *Huntingdon* only.

Fourth. That it does not appear from the evidence; what the *Berrystead* farm is.

A N S W E R S.

The respondent submits that he might safely rely upon the evidence of the receipt of all small tithes throughout the parish by former vicars, his predecessors, (in answer to these objections), from which it appears, that the immemorial usage in the parish has been so.

First, The objection that Sir *Walter Mildmay's* grants are void in law seems to come with very little propriety from the present appellant with a view to defeat the act of his predecessor, under which all

Tithes not an
object of the
mortmain act.

subsequent impropiators for a space of now near two hundred years, have uniformly acquiesced; but it is insisted, that these grants are not within the statutes of *mortmain*, nor is the subject of these grants, viz. tithes, one of the objects of those acts, as will appear from the words of those acts, in which *lands*, and *lands only*, are particularly mentioned.

Original institution of tithes.

Tithes in their original institution were designed for the support of the officiating clergy, in their respective parishes, and although they were frequently annexed to religious houses, yet some provision was always made for the person who actually performed the duty; it was incumbent upon the religious house to make a reasonable provision for the vicar, that duty devolved in the present instance upon Sir *Walter Mildmay*, after the abbey was dissolved, and it seems very hard to contend, that because Sir *Walter* has given back a part of that, the whole of which was once designed for the officiating parson, that gift shall be void; but the respondent submits, that if it be held that in such an instance as the present, a licence to alienate in *mortmain* be necessary, it is not incumbent upon him to produce such licence, but that after the length of time which has elapsed since the date of the grant (1588) and it will be presumed, that there was a licence then, and that it is now lost.

Secondly: The respondent submits; that his right to the tithe of wool, lamb, and calf, is clearly established by the first grant of Sir *William [Walter, J. R.] Mildmay*, by which those tithes were absolutely given to the vicar, and his successors; and that the verdict of the jury is warranted by that evidence alone, without having recourse to the second grant.

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Third;

Third; The words “in the county of Huntingdon,” are only descriptive of the general local situation of the parish of *Stanground with Farcet*; by much the greater part of which lies in that county, and a very small part of it in *Cambridgeshire*, and it is submitted, from the recital of the grant, and the wording of it, that it never could be the meaning of Sir *Walter Mildmay*, to give less than all the tithe of wool, lamb, and calf, (with the exception of the demesnes) throughout the parish, to which may be added, that in the grants to Sir *William*, [*Walter*, J. R.] *Mildmay*, of the manor and rectory, the county of *Huntingdon* alone is mentioned.

Fourth; The exception of the * *Berrystead* farm is a well known description of the manor farm, undoubtedly containing what was originally called the demesne of *Stanground*, and the old witnesses speak of it by the name of the * *Berrystead* farm, as being so called in the last century. * *Sic. orig.* J. R.

O B J E C T I O N.

To the fourth, fifth, and sixth issues it is objected, that the evidence does not warrant the conclusion of the jury, but that as to so much of the tithe of corn and grain as depends upon the second grant of Sir *Walter Mildmay* (by which one half of the tithe corn in *Farcet* is given) it ought to have been found with an exception of the demesnes and other lands, and also, that the vicar's right does not extend over any lands, but such as produced corn at the time of the grant, and were then called the fields of *Farcet*.

A N S W E R.

The fifth and sixth issues being sub-divisions of the fourth, the respondent humbly insists, that if the

evidence be found to be sufficient to support those issues, it will follow of course that the finding of the fourth in his favour is right.

The endorsement upon the old endowment found in the registry of *Buckden* (by which it appears that 22 *Han.* VI. 1444, the then abbot of *Thorney* increased the vicar's portion by adding to it one third of the tithe corn in *Farcet*) would, it is submitted, be alone sufficient evidence to warrant the verdict of the jury upon the fifth issue, but this is corroborated and solemnly acknowledged at the distance of near one hundred and fifty years, by the then impropiator Sir *Walter Mildmay*, who in his deed of 24 *October* 1587, recites it as a known fact, "that the vicar and his predecessors, had but only one-third part of the tithe corn of *Farcet*" without excepting any part of that hamlet.

By the grant from the abbey of *Thorney*, which gives "*tertiam garbam decimis granorum in campis de Farshed*," it is submitted, that not only the tithe of such land as at that time produced corn is granted, but all corn tithe whatever, which at any future time should arise from any newly cultivated land within the hamlet, and that such is the obvious sense of the words of the endowment, and the legal inference from them; this too plainly appears to have been the opinion of Sir *Walter Mildmay*, who in the addition which he makes to the vicar's tithe corn expressly mentions "that he would then have a full moiety of all the tithe corn renewing in the town, fields, and hamlet of *Farcet*." A description as general of the whole extent of *Farcet*, as words can convey, and that too without any exception of any lands whatever, for the exception of the demesnes of *Stanground*, in that grant,

grant, relates to the tithes of wool, lamb, and calf only.

Upon the sixth issue, by which the vicar claims two thirds of the tithe corn in *Farcet*, it is submitted, that the evidence supports the verdict; one sixth part is given by the first grant in general terms "throughout the town, fields, or hamlet of *Farcet*;" to this grant there is not any exception; but in the second grant there is an exception, to which the jury ought, as the appellant contends, to have paid some regard; and not having done so, the verdict is, in that respect, against evidence.

Upon a careful and attentive perusal of the two grants, with the deed poll of 9 April 1588, it will appear, that the deed poll is very incorrectly worded, and has certainly given rise to the errors which are manifest in the second grant.

By the first grant Sir *Walter Mildmay* had disposed of all his tithes of wool, lamb, and calf, throughout the parish (except only the demesnes of *Stanground*) the object of the deed poll is to resume to himself certain tithes which he had by a prior deed, bearing date only two days after the first grant, settled to certain uses, with a power of revocation; by that deed poll he resumes *all the tithes of wool, lamb, calf, corn, and grain*, which at any time thereafter should be coming, rising, &c. within the town or hamlet of *Farcet*; but Sir *Walter* had no tithes of wool, lamb, and calf, in *Farcet*, at that time; in this, therefore, the deed poll is incorrect; the second grant is copied from the deed poll, and professes to convey more than Sir *Walter* had to grant, viz. the tithes of wool, lamb, and calf; but it can hardly

be contended, that because it describes more than Sir *Walter* had, it shall not even pass that which it is obvious he meant, and was about to convey, namely "all those his tithes of corn and grain, within the parish, town, or hamlet of *Farcet*;" and as Sir *Walter* knew, that the vicar had at that time, *one clear moiety* of the tithe corn there, *without any exception*, and *had himself contributed a part of it but six months before*, it is impossible to conceive, that he could design to add the other moiety to it, subject to any exception whatever; in fact, the exception can only apply to the tithes of wool, lamb, and calf, by relation to the first grant, in which that exception is found, and from which it has inadvertently been copied into the deed poll, and the second grant.

Upon the third issue, by which the several parcels of land, mentioned in it, are found by the jury to lie within the vill, town, or hamlet of *Farcet*, it is submitted, that there is evidence to prove, that all those parcels are included within the known boundary of the large tract of marsh ground commonly called *Farcet Fenn*.

The manors of *Stanground* and *Farcet* were distinct from each other, and appear to have been so by the separate accounts which were kept of each, the rights exercised by the lord of the manor of *Farcet* over the marsh called "*Farcet Fenn*" clearly prove, that in old time it was considered by all persons concerned, as lying within the limits of that manor.

Smith accounts for the agistment of the fenn, *Mich. 31* to *32 Hen. VIII.* as parcel of the manor of *Farcet*.

'Sir *Walter Milmay*, August 25, 1591, obtains a lease of the manor and rectory of *Stanground* from Queen *Elizabeth* for sixty years.

The manor of *Farcet*, 7 *Edw. VI.* A. D. 1553, is granted to Sir *Walter Milmay* in fee.

By the decree of the dutchy of *Lancaster*, 7 *Eliz.* A. D. 1564, the fenn is said to be *the very right and inheritance of Sir Walter*.

By agreement, 10 *Eliz.* A. D. 1567, between Sir *Walter* and the commoners, four hundred acres of *Farcet Fenn*, adjacent to his close, called *Conquest Close*, were allotted to him, "which should be held by him, and his heirs, in feveralty for ever," from which two instruments it appears, that the decree and agreement related to the manor of *Farcet* alone; of which Sir *Walter* was at that time seised in fee; he had at that time, only a lease for years, of the manor of *Stanground*, under which the fenn could never, with legal propriety, be called *the very right and inheritance of Sir Walter*; still less could he, as lessee for years, accept from the commoners the four hundred acres adjoining to *Conquest Close*, to hold to him and his heirs in feveralty for ever; or, in compensation thereof, have taken upon him to execute to them a release of the right of *himself and his heirs* to the herbage of the residue of the fenn.

It is manifest therefore, that he was considered as lord of *Farcet*-manor only; and, in fact, those four hundred acres have been enjoyed by the lords of *Farcet* manor, in feveralty for ever since, and are actually now in the hands of Lord *Brownlow*, the present appellant.

From

From this evidence, which applies thus pointedly to the whole of *Farset Fenn*, the conclusion seems obviously to follow, that no part of the fenn can be, or ever was considered as parcel of the demesne of the manor of *Stanground*; and although it is not contended, on the part of the respondent, that in all cases the boundaries of a vill, town or hamlet, are coextensive with the boundaries of a manor of the same name, yet it is insisted, that such evidence was proper to be laid before a jury, and carries with it a degree of probability, at least where positive evidence of the actual boundary of the hamlet in question cannot, at the distance of two hundred years, be procured; especially when the fenn has, though equally near to the hamlet of *Stanground*, been ever distinguished by the name of *Farset Fenn*, and the river which lies between *Pactut's Holme* and *Horsey Bridge*, and which divides *Farset Field* and *Stanground Field* from the fenn, is likewise known by the name of *Farset Water*,

From the usage of later times, it appears, that the land-tax assessments have rated the fenn, as lying within *Farset*, that *Farset* has its *constable*, *surveyor* of highways, *overseers of the poor*, and *church or chapel wardens*.

That the occupiers of "*Conquest Lands*" serve parochial and civil offices for *Farset* only.

That *King's Delf*, *Milby*, *New Meadow*, the *Pingles*, the fishery of part of *Whittlesea Meer*, are rated to the poor's rate in *Farset*, except a few doles in *King's Delf* to *Stanground*, which was the ground of the exception, which the jury have made as to the local situation of part of *King's Delf*.

The

The local situation of the several pieces of ground, mentioned in the third issue, being by the verdict of the jury ascertained to be within the hamlet of *Farset*, the vicar's right to tithe, in pursuance of his endowments, necessarily attaches upon them; a right which, when the land was drained in the last century, was claimed by the then vicar against the impropiator; and which, though disputed as to its extent, was never absolutely denied, till the present appellant was advised to dispute, and actually does dispute any right which the vicar may have to any tithe at all; and this against the evidence of the grants of his predecessor Sir *Walter Mildmay*, from whom his impropriation is derived, against the uninterrupted enjoyment of tithes of some kind throughout the parish, against the composition of twenty-five pounds a year, constantly paid from the year 1640, to the year 1773; and lastly, against the leases of 1691, and 1751, from the then vicar to the then impropiator, of all his tithes of what nature or kind soever, in *Farset Fenn*, at the yearly rent of fifty pounds.

On the part of the appellant were produced,

First, Old records.

Second, Depositions in a cause, 1684.

The first record merely shews, that the Earl of *Westmoreland*, as impropiator of the rectory of *Stanground*, obtained judgment in an action for tithes of grain and oats, for lands *within the parish of Stanground*; this certainly proves nothing against the vicar, for it never was denied, but that the impropiator had a right to the tithe of grain in all parts of the parish, not in the hamlet of *Farset*.

The

The second record contains a declaration and plea merely, and nothing else.

The third is a judgment of nonsuit, in a cause of *Emanuel college* against *William Bellamy*, but upon what ground the nonsuit was obtained, does not appear.

If such evidence as this deserved an answer, the subsequent leases, accepted by the impropriator from the vicar, which are stated to have been granted in consequence of a compromise, would be decisive proof, that there had been no decision in those actions against the right of the vicar, but as in one record the proceedings went no farther than the plea, and it is well known, that a nonsuit by no means precludes a party from prosecuting a further claim, these records seem to have no force at all,

Nonsuit does not prevent party from further prosecution of his right.

The depositions in the old cause, appear to have been *ex parte* examinations merely; the witnesses never were examined in chief, nor was there any cross examination on the part of the vicar; the depositions were never published; such evidence, if admissible, is certainly, on the impropriator's part, entitled to very little credit, and can never be supposed to weigh, in the opinion of a jury, against old records, long usage, and the variety of circumstantial evidence produced on the respondent's part.

What relates to the supposed jurisdiction of *Stanground* manor over *Fárcut Fenn*, is certainly entitled to no credit at all; the appellant is lord of the manor of *Stanground*; the rolls and proceedings of the courts of that manor are in his hands, and are the only proper evidence of the rights which have been exercised

exercised by the lord at different times; no such evidence was produced at the trial, or offered; but as it is obvious, that such evidence must have been material, had any such existed; the respondent submits, that he has a right to conclude, either, that no such jurisdiction of the manor of *Stanground* can be proved to exist, or that, if the rolls had been produced, they would have proved the direct contrary.

From the accounts given of the perambulations, nothing certain can be concluded, but that the inhabitants of such township were jealous of the encroachments of the other, and kept a watchful eye over every attempt that might be made by the one, to abridge the rights of the other.

The vicar's right to tithes in the fenn is certainly not abridged or affected by any evidence, tending to shew, that the impropriator has occasionally received tithes there, because it was a matter of perpetual controversy between the impropriators and the vicars during many years, compositions of twenty-five and thirty-two pounds existed during the time, which compositions particularly related to *King's Lands* in the fenn, so that any receipt of tithes from off those lands by the impropriator, as long as that composition existed, was in fact the receipt of the vicar, by the hands of another.

Upon the whole, it is submitted, on the part of the respondent, that the order which has been made by the Lord Chancellor for refusing a new trial, ought to be affirmed for the following (amongst other)

R E A S O N S :

First, That there is not the least ground to impute to the learned judge, who tried the cause, any misdirection to the jury, nor the admission of any improper evidence in favour of the respondent, nor the rejection of any legal evidence on the part of the appellant.

Secondly, That the far greater and most material parts of the evidence is in writing; of the import and effect of which, the Lord Chancellor was, and their lordships are competent judges; and upon which there is no reason to suppose, that any further light could be thrown, by another reference to a jury.

Thirdly, That the parole testimony given; was almost wholly in favour of the respondent, and the cause was tried with every possible advantage to the parties and to justice, a full special jury of gentlemen having attended the trial (which employed two whole days) many of whom had taken a view of the lands, out of which the tithes in question arise.

July 2; A. D. 1782.

Judgment of the
House.

Ordered and adjudged, that the appeal be dismissed, and the order complained of, affirmed.

See the original cause, under Michaelmas Term, 19 Geo. III.

SUPPLEMENT.

Hilary Term, 4 Anne.

January 20, A. D. 1706.

In the Exchequer.

Chamberlain against Plympton.

*See the case of Chamberlain and Newte, under
Easter Term, 4 Anne, ante, p. 101. under Hilary
Term, 5 Anne, ante, p. 106. and under this
same term, post, 1090.*

TITHE for malt mills is only personal; for
it is not natural increase, being only profit
arising from the invention of a machine, and the la-
bour of man and horse; and personal can only be
for the tithe of the neat profits, deducting all charges.

*Tithe for malt
mills is only
personal. 9 Vin.
Abr. 40. Marg.*

February 17, A. D. 1706.

In the House of Lords.

*Roger Chamberlain and Francis } Appellants.
Plympton,*

John Newte, Clerk, Respondent.

FROM this decree the defendants appealed, in-
sisting, that if any tithe was due for such malt
mills, it could be only a personal tithe, because
there

*1 Br. Ap. in
Parl. 158, 159.*

* These cases seem to be erroneously filed "Cases in PARLIAMENT," because they were determined in the Lords *appellant*, not in their *legislative* jurisdiction; cases of controverted elections are solely determined

there was in this case no natural increase, but only a profit arising from the invention of a machine, and the labour of man and horse, and if personal, the same by law could only be a tenth of the net profit, after deducting all charges; that if a personal tithe was due for such mills, it was only due in such places where personal tithe had been by custom paid for forty years before the statute of *Edw. VI.* but no such custom was proved to be for such mills in *Tiverton*; on the contrary, the appellants had proved, that there was another horse-male mill, and several hand male mills, and many falling mills of long standing, and yet no tithes were ever paid or demanded for the same; that the respondent had charged by his bill, that tithes for such mills were due by custom, which the appellants had denied by their answer; and yet the respondent had proved no such custom, nor the value of the tenth toll-dish, or any other toll, to be taken by the appellants, but only two-pence abuthe for grinding; and therefore the decree was not warranted by the proofs and proceedings in the cause; that if the decree should be affirmed, it would sometimes happen, that the tenth toll-dish, as decreed, would be the whole of the proprietor's gain, considering the expence of erecting and maintaining this mill; and in this event also, the same corn would, against all law and reason, pay tithes twice; for that all, or the greatest part of such corn, was grown within the same parish, and the tenth thereof was paid to the respondent in the field; and if any was ground which grew elsewhere, the same in like

That same matter should pay tithe twice, is against all law and reason.

determined in the House of Commons, not in PARLIAMENT. Impediments only can be properly said to be determined in PARLIAMENT; because the COMMONS prosecute, the KING appoints a lord high steward at the instance of the LORDS, and they finally adjudge. J. R.

manner

manner paid the tenth to the incumbent of the parish where it was grown: And lastly, this decree would introduce a new sort of tythe, and would affect a great number of inhabitants in *London*, and elsewhere, there being at least an hundred such mills used in the city of *London*, and some thousands of them in other parts of the kingdom, for which tithes were never paid nor demanded; but which, if the decree should be affirmed, must all pay tithes.

On the other side it was contended, that tithes were due both by the canon and statute law for new erected mills; and by the statute of *Articuli Cleri*, chap. 5. for new erected mills; and which statute expressly provides, that no prohibition shall lie in such case; that there have from time to time been several * resolutions and decrees for tithes of mills, and that the rest of the mills within the respondent's portions, had all along paid tithes, or a composition for the same, and every *modus* for a mill proved tithes to be due, if they were not discharged by such *modus*: that the tithe in question was a predial, not a personal tithe, and the tenth toll-dish was payable for the same; and so agreed both the canon law, and the custom and usage of this kingdom; and that it was not a double tithe, because it was paid by different persons, and for different purposes; in the first instance, by the owner of the corn, and in the second, by the owner of the mill.

After hearing counsel on this appeal, it was ordered, that the judges should be heard to this point, "*Whether the tithe payable for corn ground in a horse malt mill, is a personal, predial, or mixed tithe, and in*

Decree reversed,
27 Feb. 1706. }
Journ. XVIII.
241. 3 Br. Ap.
in Parl. 157.
159.

* See tit. "*Mills*," in the Index.

what manner of tithes is to be paid for corn ground in such mill, if any tithes is due from the same."

See this case under Hilary Term, 4 Anne, ante, 101, 106, 1087.

A. D. 1706.

In the House of Lords.

Newte and Chamberlain.

Tithes of a mill
are personal
tithes. 1 Eq.
Cas. Abr. 366.
Pl. 3.

IT was adjudged in the House of Peers, on appeal from the court of *Exchequer*, that the tithes of a mill are personal tithes, against several seeming authorities or doubts in the books; and that in consequence of their being personal tithes, not the tenth toll or tenth dish of the corn ground belongs to the parson, but the tenth part of the clear profits, after the charges of erecting the mill, and the other charges of servants, horses, and other expences deducted.

See Chamberlain and Newte, and Newte and Chamberlain, in the table of cases prefixed to the first volume.

Hilary Term, 6 Anne.

March 5, A. D. 1707.

In the Exchequer.

Pole against Gardiner.

Prescriptions had
their beginning
before the time
of Richard the
First. 9 Vin.
Abr. 18. pl. 47.

OBJECTON was to a *modus*, that it was too great, and too near the value of the tithes in kind; prescriptions had their beginning before *Richard the First*, when it is probable, that twelve-pence
or

or eight-pence might have been the value of the inheritance; and therefore decreed in the *Exchequer* to be a composition, and not a *modus*, but reversed, for churches might have been endowed with more than the value of the tithes.

See this case by the name of Gatdiner and Pole, under Trinity Term, 5 Anne, ante, 103.

Hilary Term, 9 Anne.

January, A. D. 1710.

In the *Exchequer*.

Mickleburgh against *Crisp*.

BILL brought by the rector of *S.* for tithes of beasts fed upon a common; defendant by answer insists, that the common extends into several parishes, and that the custom was, that every farmer should pay tithes to the rector where he lived; and that he lived in another parish, and he paid the tithes to that rector; but there being proof that the cattle was driven upon that part of the common that lies in *S.* there was a decree for the rector of *S.* but reversed, because the custom was good, there being no inclosures.

Custom, that every farmer should pay tithes to the rector where he lived, good. 9 *Vin. Abr.* 43. pl. 6.

See this case by the name of Crisp and Mickleburgh, under Trinity Term, 7 Anne, ante, 115.

*Hilary Term, 2 Geo. I.**March 21, A. D. 1715.*In the *Exchequer*.*Turner against Wray.*

Parson no right
to tithes belong-
ing to an abbey,
on the dissolu-
tion thereof.
9 *Vin. Abr.* 55.
pl. 14.

ABBOT seised in right of his abbey of a rec-
tory with all tithes, &c. the abbey is dissolv-
ed, and the crown grants the tithes, &c. the parson
disputes the tithes with the patentee, but bill dis-
missed.

*See this case by the name of Turner and Smith,
and others, under Trinity Term, 12 Anne, 123.*

*Hilary Term, 3 Geo. I.**A. D. 1716.*In the *Exchequer*.

*Benson Impropiator of Bromley St. Leonard,
Middlesex, against Watkins, and others.*

Tithe of turnips
due toties quoties.
3 *Burn's Ecclef.*
Law, 453.

THE court declared the tithe of turnips to be
due, though sowed never so often in the same
year, and though upon the same land.

*See this case by the name of Benson against Watkins,
under this term, ante, p. 135.*

The

Hilary Term, 4 Geo. I.

1093

The following *modus*, viz.

Five shillings an acre for the tithe of winter corn,

Four shillings an acre for summer corn,

Two shillings and sixpence an acre for upland meadow; and

Three shillings an acre for low land, were set aside, as too big.

Modus set aside as too big.
3 Burn's Ecclef. Law, 412.

Hilary Term, 4 Geo. I.

A. D. 1717.

In the *Exchequer*.

Lloyd against *Small*.

THE defendants insisted on several *modus* for all small tithes, arising out of their respective farms; but it appearing by their answer, that the small tithes in kind demanded by the bill, did not amount to more in that year, than the pretended *modus*, the *modus* were set aside.

Modus set aside, because the small tithes in kind did not amount to more than the *modus* themselves. 3 Burn's Ecclef. Law, 412, 413.

January 23, A. D. 1717.

In the *Exchequer*.

Austin against *Nicholas*.

A Custom was for the vicar to have tithes for all pease and beans set, drilled, or sowed in rows in gardens, or like manner; afterwards a new improvement was found out to use a plow instead of a spade, yet such pease and beans shall pay tithes.

Vicar to have tithes of pease and beans in gardens, though a plow used instead of a spade. 9 Vin. Abr. 22. pl. 3.

See this case by the name of *Nicholas and Elliot*, under Hilary Term, 10 Annæ, ante, 119.

Decree between
other parties
may be read as a
precedent, tho'
not as evidence.

A decree between other parties may be read as a precedent, though not as evidence. *S. C.*

12 *Fin. Abr.* 94. pl. 20.

Inquisition not
admitted to be
read, there be-
ing no commis-
sion to warrant

An inquisition not admitted to be read as evidence, there being no commission to warrant it. *S. C.*

12 *Fin. Abr.* 120. pl. 2.

Hilary Term, 5 Geo. I.

A. D. 1718.

In the *Exchequer*.

Lord *Arundel's* case.

Shobrook's case.

What evidence
books of ac-
count, *memoran-
dums*, &c.
12 *Fin. Abr.*
255. pl. 3.

BOOKS of account, *memorandums*, &c. of a preceding vicar, may be made use of, as evidence for his successor to support his demands, in case of tithes, &c. by *Bury*, Chief Baron, and Baron *Price*.

A. D. 1718.

In the *Exchequer*.

Gregory against *Lutterell*,

Evidence to sup-
port payments,
in cases of tithes,
is allowed more
extensively, than
in any other case.
12 *Fin. Abr.*
255. pl. 3.

A Paper 1639, signed, &c. to prove a composition for rabbits on *Brampton* burroughs, by the predecessor of the present vicar, &c. was read by the Barons (*Page besitante*) though no direct proof, that the defendant claimed under the person that signed it, the warren (that is, burroughs) &c. it appearing,

pearing, that it was of an ancient date, that the estates mentioned in it, were as defendant now had; and there being proof of the hand-writing of one of the witnesses, &c. but afterwards held, that it was not sufficient to support plaintiff's demand for the uncertainty, as that there might be a warren at another place, or a piece of ground so called, or the composition might be for other tithes arising out of the warren.

Michaelmas Term, 6 Geo. I.

A. D. 1719.

In the *Exchequer*.

Crow, tenant under the church of *Rocheſter*,
of the tithes in the hamlet of *Modingham*, in
the pariſh of *Chippingbuſh* in *Kent*,

againſt

Stoddart.

THE court declared the tithe of turnips ſowed after corn, and eaten by unprofitable cattle, to be due; though it was urged to be an improvement of the land, and that the parſon has the benefit of it the next year.

Tithes due for
turnips ſowed
after corn, and
eaten by unpro-
fitable cattle.
3 Burn's Eccleſ.
Law, 452.

Hilary Term, 6 Geo. I.

A. D. 1719.

In the *Exchequer*.

Anon.

Composition evidence of the right to tithes. 12 *Fin. Abr.* 255. pl. 4. Bishop of *Exeter's* case.

EVERY composition is an evidence of the right and duty of the tithes for which the composition is made, yet in the Bishop of *Exeter's* case it was held, that a general composition may include a *modus* as well as tithe in kind, where the *moduses* were for several matters, for some years they may be more, in some years less, and so may be compounded for; and though this composition continues forty years, yet the *modus* shall continue.

Modus shall continue, though the composition be of forty years standing.

Trinity Term, 7 Geo. I.

A. D. 1720.

In the *Exchequer*.*Franklin and Jenkins.*

Pretended *moduses*, set aside as too big. 2 *Burn's Eccles. Law*, 413.

THE bill was brought by the parishioners of *Farnham* in *Hampshire*, against the vicar and tenant of the impropriate there, under the hospital of *St. Cross*, to establish several *moduses*, some of which were set aside, as too big; and among the rest, a pretended *modus* of six-pence for the tithe of a calf.

See this case by the name of *Franklyn* against the master and brethren of *Saint Cross*, &c. under *Trinity Term, 8 Geo. I. ante p. 157.*

to per

Easter Term, 8 Geo. I.

A. D. 1721.

In the Exchequer.

*Goddard, rector of Castle Eaton, in Wiltshire,
against Keeble.*

THE defendant insisted upon several *modus*,
viz.

Three-pence for a milk cow,

Three-pence for a lamb,

Three-pence for a colt,

One penny for a garden,

and the like; but they were all set aside, in regard
no time for the payment thereof was ascertained by
the defendant.

*Several modus
set aside, because
no time ascer-
tained for the
payment of
them. 3 Barn's
Eccles. Law,
419.*

*See this case by the name of Goddard against Keeble,
under Easter Term, 9 Geo. I. ante p. 163.*

Trinity Term, 8 Geo. I.

A. D. 1721.

In the Exchequer.

*Woodford, vicar of Ebesham, alias Ensom in
Surrey, against Crosse.*

MODUS of four-pence a cow for milk and
and calf,

*Modus set
aside, because no
day of payment
set forth.*

3 Barn's Eccles. Law, 420.

Two-

there was in this case no natural increase, but only a profit arising from the invention of a machine, and the labour of man and horse; and if personal, the same by law could only be a tenth of the net profit, after deducting all charges; that if a personal tithe was due for such mills, it was only due in such places where personal tithe had been by custom paid for forty years before the statute of *Edw. VI.* but no such custom was proved to be for such mills in *Tiverton*; on the contrary, the appellants had proved, that there was another horse-male mill, and several hand male mills, and many falling mills of long standing, and yet no tithes were ever paid or demanded for the same; that the respondent had charged by his bill, that tithes for such mills were due by custom, which the appellants had denied by their answer; and yet the respondent had proved no such custom, nor the value of the tenth toll-dish, or any other toll, to be taken by the appellants, but only two-pence abulhel for grinding; and therefore the decree was not warranted by the proofs and proceedings in the cause; that if the decree should be affirmed, it would sometimes happen, that the tenth toll-dish, as decreed, would be the whole of the proprietor's gain, considering the expence of erecting and maintaining this mill; and in this event also, the same corn would, against all law and reason, pay tithes twice; for that all, or the greatest part of such corn, was grown within the same parish, and the tenth thereof was paid to the respondent in the field; and if any was ground which grew elsewhere, the same in like

That same matter should pay tithe twice, is against all law and reason.

Determined in the House of Commons, not in PARLIAMENT.
 Impeachments only can be properly said to be determined in PARLIAMENT; because the COMMONS prosecute, the KING appoints a lord high steward at the instance of the LORDS, and they finally adjudge. J. R.

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manner paid the tenth to the incumbent of the parish where it was grown : And lastly, this decree would introduce a new sort of tythe, and would affect a great number of inhabitants in *London*, and elsewhere, there being at least an hundred such mills used in the city of *London*, and some thousands of them in other parts of the kingdom, for which tithes were never paid nor demanded ; but which, if the decree should be affirmed, must all pay tithes.

On the other side it was contended, that tithes were due both by the canon and statute law for new erected mills ; and by the statute of *Articuli Cleri*, *chap. 5.* for new erected mills ; and which statute expressly provides, that no prohibition shall lie in such case ; that there have from time to time been several * resolutions and decrees for tithes of mills, and that the rest of the mills within the respondent's portions, had all along paid tithes, or a composition for the same, and every *modus* for a mill proved tithes to be due, if they were not discharged by such *modus* : that the tithe in question was a predial, not a personal tithe, and the tenth toll-dish was payable for the same ; and so agreed both the canon law, and the custom and usage of this kingdom ; and that it was not a double tithe, because it was paid by different persons, and for different purposes ; in the first instance, by the owner of the corn, and in the second, by the owner of the mill.

After hearing counsel on this appeal, it was ordered, that the judges should be heard to this point, "*Whether the tithe payable for corn ground in a horse malt mill, is a personal, predial, or mixed tithe, and in*

Decree reversed,
17 Feb 1706. *J*
Journ. XVIII.
241. 1 Br. Ap.
in Parl. 157.
159.

* See tit. "*Mills*," in the Index.

what manner of tithes is to be paid for corn ground in such mill, if any tithe is due from the same."

See this case under Hilary Term, 4 Anne, ante, 101, 106, 1087.

A. D. 1706.

In the House of Lords.

Newte and Chamberlain.

Tithes of a mill
are personal
tithes. 1 Eq.
Cas. Abr. 366.
Pl. 3.

IT was adjudged in the House of Peers, on appeal from the court of *Exchequer*, that the tithes of a mill are personal tithes, against several seeming authorities or doubts in the books; and that in consequence of their being personal tithes, not the tenth toll or tenth dish of the corn ground belongs to the parson, but the tenth part of the clear profits, after the charges of erecting the mill, and the other charges of servants, horses, and other expences deducted.

See Chamberlain and Newte, and Newte and Chamberlain, in the table of cases prefixed to the first volume.

Hilary Term, 6 Anne.

March 5, A. D. 1707.

In the Exchequer.

Pole against Gardiner.

Prescriptions had
their beginning
before the time
of Richard the
First. 9 Vin.
Abr. 18. pl. 47.

OBJECTON was to a *modus*, that it was too great, and too near the value of the tithes in kind; prescriptions had their beginning before *Richard the First*, when it is probable, that twelve-pence
or

or eight-pence might have been the value of the inheritance; and therefore decreed in the *Exchequer* to be a composition, and not a *modus*, but reversed, for churches might have been endowed with more than the value of the tithes.

See this case by the name of Gardiner and Pole, under Trinity Term, 5 Anne, ante, 103.

Hilary Term, 9 Anne.

January, A. D. 1710.

In the *Exchequer*.

Mickleburgh against *Crisp*.

BILL brought by the rector of *S.* for tithes of beasts fed upon a common; defendant by answer insists, that the common extends into several parishes, and that the custom was, that every farmer should pay tithes to the rector where he lived; and that he lived in another parish, and he paid the tithes to that rector; but there being proof that the cattle was driven upon that part of the common that lies in *S.* there was a decree for the rector of *S.* but reversed, because the custom was good, there being no inclosures.

Custom, that every farmer should pay tithes to the rector where he lived, good. 9 *Vin. Abr.* 43. pl. 6.

See this case by the name of Crisp and Mickleburgh, under Trinity Term, 7 Anne, ante, 115.

*Hilary Term, 2 Geo. I.**March 21, A. D. 1715.*In the *Exchequer*.*Turner against Wray.*

Parson no right
to tithes belong-
ing to an abbey,
on the dissolu-
tion thereof.
9 Vin. Abr. 55.
pl. 14.

ABBOT seised in right of his abbey of a rec-
tory with all tithes, &c. the abbey is dissolv-
ed, and the crown grants the tithes, &c. the parson
disputes the tithes with the patentee, but bill dis-
missed.

*See this case by the name of Turner and Smith,
and others, under Trinity Term, 12 Anne, 123.*

*Hilary Term, 3 Geo. I.**A. D. 1716.*In the *Exchequer*.

*Benson Impropiator of Bromley St. Leonard,
Middlesex, against Watkins, and others.*

Tithe of turnips
due toties quoties.
3 Burn's Ecclef.
Law, 453.

THE court declared the tithe of turnips to be
due, though sowed never so often in the same
year, and though upon the same land.

*See this case by the name of Benson against Watkins,
under this term, ante, p. 135.*

The

Hilary Term, 4 Geo. I.

1093

The following *modus*, viz.

Five shillings an acre for the tithe of winter corn,

Four shillings an acre for summer corn,

Two shillings and sixpence an acre for upland meadow; and

Three shillings an acre for low land, were set aside, as too big.

Modus set aside as too big.
3 Burn's Ecclef. Law, 412.

Hilary Term, 4 Geo. I.

A. D. 1717.

In the *Exchequer*.

Lloyd against *Small*.

THE defendants insisted on several *modus* for all small tithes, arising out of their respective farms; but it appearing by their answer, that the small tithes in kind demanded by the bill, did not amount to more in that year, than the pretended *modus*, the *modus* were set aside.

Modus set aside, because the small tithes in kind did not amount to more than the *modus* themselves. 3 Burn's Ecclef. Law, 412, 413.

January 23, A. D. 1717.

In the *Exchequer*.

Austin against *Nicholas*.

A Custom was for the vicar to have tithes for all pease and beans set, drilled, or sowed in rows in gardens, or like manner; afterwards a new improvement was found out to use a plow instead of a spade, yet such pease and beans shall pay tithes.

Vicar to have tithes of pease and beans in gardens, though a plow used instead of a spade. 9 Vin. Abr. 22. pl. 3.

See this case by the name of *Nicholas* and *Elliot*, under Hilary Term, 10 Anne, ante, 119.

Decree between
other parties
may be read as a
precedent, tho'
not as evidence.

A decree between other parties may be read as a precedent, though not as evidence. S. C.

12 Vin. Abr. 94. pl. 20.

Inquisition not
admitted to be
read, there be-
ing no commis-
sion to warrant

An inquisition not admitted to be read as evidence, there being no commission to warrant it. S. C.

12 Vin. Abr. 120. pl. 2.

Hilary Term, 5 Geo. I.

A. D. 1718.

In the *Exchequer*.

Lord *Arundel's* case.

Shobrook's case.

What evidence
books of ac-
count, *memoran-
dums, &c.*
12 Vin. Abr.
255. pl. 1.

BOOKS of account, *memorandums, &c.* of a preceding vicar, may be made use of, as evidence for his successor to support his demands, in case of tithes, &c. by *Bury*, Chief Baron, and Baron *Price*.

A. D. 1718.

In the *Exchequer*.

Gregory against *Luttrell*,

Evidence to sup-
port payments,
in cases of tithes,
is allowed more
extensively, than
in any other case.
12 Vin. Abr.
255. pl. 3.

A Paper 1639, signed, &c. to prove a composition for rabbits on *Brampton* burroughs, by the predecessor of the present vicar, &c. was read by the Barons (*Page besitants*) though no direct proof, that the defendant claimed under the person that signed it, the warren (that is, burroughs) &c. it appearing,

pearing, that it was of an ancient date, that the estates mentioned in it, were as defendant now had ; and there being proof of the hand-writing of one of the witnesses, &c. but afterwards held, that it was not sufficient to support plaintiff's demand for the uncertainty, as that there might be a warren at another place, or a piece of ground so called, or the composition might be for other tithes arising out of the warren.

Michaelmas Term, 6 Geo. I.

A. D. 1719.

In the *Exchequer*.

Crow, tenant under the church of *Rocheſter*,
of the tithes in the hamlet of *Modingbam*, in
the pariſh of *Chippingbuſh* in *Kent*,

againſt

Stoddart.

THE court declared the tithe of turnips ſowed after corn, and eaten by unprofitable cattle, to be due ; though it was urged to be an improvement of the land, and that the parſon has the benefit of it the next year.

Tithes due for
turnips ſowed
after corn, and
eaten by unpro-
fitable cattle.
3 *Burn's Ecclef.*
Law, 452.

R E A S O N S :

First, That there is not the least ground to impute to the learned judge, who tried the cause, any misdirection to the jury, nor the admission of any improper evidence in favour of the respondent, nor the rejection of any legal evidence on the part of the appellant.

Secondly, That the far greater and most material part of the evidence is in writing; of the import and effect of which, the Lord Chancellor was, and their lordships are competent judges; and upon which there is no reason to suppose, that any further light could be thrown, by another reference to a jury.

Thirdly, That the parole testimony given, was almost wholly in favour of the respondent, and the cause was tried with every possible advantage to the parties and to justice, a full special jury of gentlemen having attended the trial (which employed two whole days) many of whom had taken a view of the lands, out of which the tithes in question arise.

July 2, A. D. 1782.

Judgment of the
House.

Ordered and adjudged, that the appeal be dismissed, and the order complained of, affirmed.

See the original cause, under Michaelmas Term, 19 Geo. III.

SUPPLEMENT.

Hilary Term, 4 Anne.

January 20, A. D. 1706.

In the Exchequer.

Chamberlain against Plympton.

*See the case of Chamberlain and Newte, under
Easter Term, 4 Anne, ante, p. 101. under Hilary
Term, 5 Anne, ante, p. 106. and under this
same term, post, 1090.*

TITHE for malt mills is only personal; for
it is not natural increase, being only profit
arising from the invention of a machine, and the la-
bour of man and horse; and personal can only be
for the tithe of the neat profits, deducting all charges.

*Tithe for malt
mills is only
personal. 9 Vin.
Abr. 40. Marg.*

February 17, A. D. 1706.

In the House of Lords.

*Roger Chamberlain and Francis } Appellants.
Plympton,*

John Newte, Clerk, Respondent.

FROM this decree the defendants appealed, in-
sisting, that if any tithe was due for such malt
mills, it could be only a personal tithe, because
there

*1 Br. Ap. in *
Parl. 158, 159.*

* These cases seem to be erroneously filed "Cases in PARLIA-
MENT," because they were determined in the Lords *appellant*, not in
their *legislative* jurisdiction; cases of controverted elections are solely
determined

there was in this case no natural increase, but only a profit arising from the invention of a machine, and the labour of man and horse; and if personal, the same by law could only be a tenth of the net profit, after deducting all charges; that if a personal tithe was due for such mills, it was only due in such places where personal tithe had been by custom paid for forty years before the statute of *Edw. VI.* but no such custom was proved to be for such mills in *Tiverton*; on the contrary, the appellants had proved, that there was another horse-male mill, and several hand-male mills, and many falling-mills of long standing, and yet no tithes were ever paid or demanded for the same; that the respondent had charged by his bill, that tithes for such mills were due by custom, which the appellants had denied by their answer; and yet the respondent had proved no such custom, not the value of the tenth toll-dish, or any other toll, to be taken by the appellants, but only two-pence abushel for grinding; and therefore the decree was not warranted by the proofs and proceedings in the cause; that if the decree should be affirmed, it would sometimes happen, that the tenth toll-dish, as decreed, would be the whole of the proprietor's gain, considering the expence of erecting and maintaining this mill; and in this event also, the same corn would, against all law and reason, pay tithes twice; for that all, or the greatest part of, such corn, was grown within the same parish, and the tenth thereof was paid to the respondent in the field; and if any was ground which grew elsewhere, the same in like

That same matter should pay tithe twice, is against all law and reason.

determined in the House of Commons, not in PARLIAMENT. Impeachments only can be properly said to be determined in PARLIAMENT; because the COMMONS prosecute, the KING appoints a lord high steward at the instance of the LORDS, and they finally adjudge. J. R.

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manner paid the tenth to the incumbent of the parish where it was grown : And lastly, this decree would introduce a new sort of tythe, and would affect a great number of inhabitants in *London*, and elsewhere, there being at least an hundred such mills used in the city of *London*, and some thousands of them in other parts of the kingdom, for which tithes were never paid nor demanded ; but which, if the decree should be affirmed, must all pay tithes.

On the other side it was contended, that tithes were due both by the canon and statute law for new erected mills ; and by the statute of *Articuli Cleri*, chap. 5. for new erected mills ; and which statute expressly provides, that no prohibition shall lie in such case ; that there have from time to time been several * resolutions and decrees for tithes of mills, and that the rest of the mills within the respondent's portions, had all along paid tithes, or a composition for the same, and every *modus* for a mill proved tithes to be due, if they were not discharged by such *modus* : that the tithe in question was a predial, not a personal tithe, and the tenth toll-dish was payable for the same ; and so agreed both the canon law, and the custom and usage of this kingdom ; and that it was not a double tithe, because it was paid By different persons, and for different purposes ; in the first instance, by the owner of the corn, and in the second, by the owner of the mill.

Articuli cleri,
chap. 5.

After hearing counsel on this appeal, it was ordered, that the judges should be heard to this point, "*Whether the tithe payable for corn ground in a horse malt mill, is a personal, predial, or mixed tithe, and in*

Decree reversed,
17 Feb. 1706. }
Journ. XVIII.
241. 1 Br. Ap.
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what manner of tithes is to be paid for corn ground in such mill, if any tithes is due from the same."

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In the House of Lords.

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Tithes of a mill
are personal
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IT was adjudged in the House of Peers, on appeal from the court of *Exchequer*, that the tithes of a mill are personal tithes, against several seeming authorities or doubts in the books; and that in consequence of their being personal tithes, not the tenth toll or tenth dish of the corn ground belongs to the parson, but the tenth part of the clear profits, after the charges of erecting the mill, and the other charges of servants, horses, and other expences deducted.

See Chamberlain and Newte, and Newte and Chamberlain, in the table of cases prefixed to the first volume.

Hilary Term, 6 Anne.

March 5, A. D. 1707.

In the Exchequer.

Pole against Gardiner.

Prescriptions had
their beginning
before the time
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OBJECTON was to a *modus*, that it was too great, and too near the value of the tithes in kind; prescriptions had their beginning before *Richard the First*, when it is probable, that twelve-pence or

or eight-pence might have been the value of the inheritance; and therefore decreed in the *Exchequer* to be a composition, and not a *modus*, but reversed, for churches might have been endowed with more than the value of the tithes.

See this case by the name of Gardiner and Pole, under Trinity Term, 5 Anne, ante, 103.

Hilary Term, 9 Anne.

January, A. D. 1710.

In the *Exchequer*.

Mickleburgh against *Crisp*.

BILL brought by the rector of *S.* for tithes of beasts fed upon a common; defendant by answer insists, that the common extends into several parishes, and that the custom was, that every farmer should pay tithes to the rector where he lived; and that he lived in another parish, and he paid the tithes to that rector; but there being proof that the cattle was driven upon that part of the common that lies in *S.* there was a decree for the rector of *S.* but reversed, because the custom was good, there being no inclosures.

Custom, that every farmer should pay tithes to the rector where he lived, good. 9 *Vis. Abr.* 43. pl. 6.

See this case by the name of Crisp and Mickleburgh, under Trinity Term, 7 Anne, ante, 115.

Hilary Term, 2 Geo. I.

March 21, A. D. 1715.

In the *Exchequer*.

Turner against Wray.

Parson no right
to tithes belong-
ing to an abbey,
on the dissolu-
tion thereof.
9 Vin. Abr. 55.
pl. 14.

ABBOT seised in right of his abbey of a rec-
tory with all tithes, &c. the abbey is dissolv-
ed, and the crown grants the tithes, &c. the parson
disputes the tithes with the patentee, but bill dis-
missed.

*See this case by the name of Turner and Smith,
and others, under Trinity Term, 12 Anne, 123.*

Hilary Term, 3 Geo. I.

A. D. 1716.

In the *Exchequer*.

*Benson Impropiator of Bromley St. Leonard,
Middlesex, against Watkins, and others.*

Tithe of turnips
due toties quoties.
3 Burn's Eccles.
Law, 453.

THE court declared the tithe of turnips to be
due, though sowed never so often in the same
year, and though upon the same land.

*See this case by the name of Benson against Watkins,
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Hilary Term, 4 Geo. I.

1093

The following *modus*, viz.

Five shillings an acre for the tithe of winter corn,

Four shillings an acre for summer corn,

Two shillings and sixpence an acre for upland meadow; and

Three shillings an acre for low land, were set aside, as too big.

Modus set aside as too big. 3 Burn's Eccles. Law, 412.

Hilary Term, 4 Geo. I.

A. D. 1717.

In the *Exchequer*.

Lloyd against *Small*.

THE defendants insisted on several *modus* for all small tithes, arising out of their respective farms; but it appearing by their answer, that the small tithes in kind demanded by the bill, did not amount to more in that year, than the pretended *modus*, the *modus* were set aside.

Modus set aside, because the small tithes in kind did not amount to more than the *modus* themselves. 3 Burn's Eccles. Law, 412, 413.

January 23, A. D. 1717.

In the *Exchequer*.

Austin against *Nicholas*.

A Custom was for the vicar to have tithes for all pease and beans set, drilled, or sowed in rows in gardens, or like manner; afterwards a new improvement was found out to use a plow instead of a spade, yet such pease and beans shall pay tithes.

Vicar to have tithes of pease and beans in gardens, though a plow used instead of a spade. 9 Vin. Abr. 22. pl. 3.

See this case by the name of *Nicholas and Elliot*, under Hilary Term, 10 Anne, ante, 119.

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12 *Fin. Abr.* 94. pl. 20.

Inquisition not
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ing no commis-
sion to warrant

An inquisition not admitted to be read as evidence, there being no commission to warrant it. *S. C.*

12 *Fin. Abr.* 120. pl. 2.

Hilary Term, 5 Geo. I.

A. D. 1718.

In the *Exchequer*.

Lord *Arundel's* case.

Sbobrook's case.

What evidence
books of ac-
count, *memoran-
dums*, &c.
12 *Fin. Abr.*
255. pl. 1.

BOOKS of account, *memorandums*, &c. of a preceding vicar, may be made use of, as evidence for his successor to support his demands, in case of tithes, &c. by *Bury*, Chief Baron, and Baron *Price*.

A. D. 1718.

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A Paper 1639, signed, &c. to prove a composition for rabbits on *Brampton* burroughs, by the predecessor of the present vicar, &c. was read by the Barons (*Page hesitante*) though no direct proof, that the defendant claimed under the person that signed it, the warren (that is, burroughs) &c. it appearing,

pearing, that it was of an ancient date, that the estates mentioned in it, were as defendant now had; and there being proof of the hand-writing of one of the witnesses, &c. but afterwards held, that it was not sufficient to support plaintiff's demand for the uncertainty, as that there might be a warren at another place, or a piece of ground so called, or the composition might be for other tithes arising out of the warren.

Michaelmas Term, 6 Geo. I.

A. D. 1719.

In the *Exchequer*.

Crow, tenant under the church of *Rochester*,
of the tithes in the hamlet of *Modingham*, in
the parish of *Chippinghurst* in *Kent*,

against

Stoddart.

THE court declared the tithe of turnips sowed after corn, and eaten by unprofitable cattle, to be due; though it was urged to be an improvement of the land, and that the parson has the benefit of it the next year.

Tithes due for
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R E A S O N S :

First, That there is not the least ground to impute to the learned judge, who tried the cause, any misdirection to the jury, nor the admission of any improper evidence in favour of the respondent, nor the rejection of any legal evidence on the part of the appellant.

Secondly, That the far greater and most material part of the evidence is in writing; of the import and effect of which, the Lord Chancellor was, and their lordships are competent judges; and upon which there is no reason to suppose, that any further light could be thrown, by another reference to a jury.

Thirdly, That the parole testimony given; was almost wholly in favour of the respondent, and the cause was tried with every possible advantage to the parties and to justice, a full special jury of gentlemen having attended the trial (which employed two whole days) many of whom had taken a view of the lands, out of which the tithes in question arise.

July 2; A. D. 1782.

Judgment of the
House.

Ordered and adjudged, that the appeal be dismissed, and the order complained of, affirmed.

See the original cause, under Michaelmas Term, 19 Geo. III.

SUPPLEMENT.

Hilary Term, 4 Anne.

January 20, A. D. 1706.

In the Exchequer.

Chamberlain against Plympton.

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*Tithe for malt
mills is only
personal. 9 Vin.
Abr. 40. Marg.*

February 17, A. D. 1706.

In the House of Lords.

*Roger Chamberlain and Francis } Appellants.
Plympton,*

John Newte, Clerk, } Respondent.

FROM this decree the defendants appealed, insisting, that if any tithe was due for such malt mills, it could be only a personal tithe, because there

*1 Br. Ap. in *
Parl. 158, 159.*

* These cases seem to be erroneously filed "Cases in PARLIAMENT," because they were determined in the Lords *appellant*, not in their *legislative* jurisdiction; cases of controverted elections are solely determined

there was in this case no natural increase, but only a profit arising from the invention of a machine, and the labour of man and horse, and if personal, the same by law could only be a tenth of the net profit, after deducting all charges; that if a personal tithe was due for such mills, it was only due in such places where personal tithe had been by custom paid for forty years before the statute of *Edw. VI.* but no such custom was proved to be for such mills in *Tiverton*; on the contrary, the appellants had proved, that there was another horse-male mill, and several hand-male mills, and many falling-mills of long standing, and yet no tithes were ever paid or demanded for the same; that the respondent had charged by his bill, that tithes for such mills were due by custom, which the appellants had denied by their answer; and yet the respondent had proved no such custom, nor the value of the tenth toll-dish, or any other toll, to be taken by the appellants, but only two-pence abushel for grinding; and therefore the decree was not warranted by the proofs and proceedings in the cause; that if the decree should be affirmed, it would sometimes happen, that the tenth toll-dish, as decreed, would be the whole of the proprietor's gain, considering the expence of erecting and maintaining this mill; and in this event also, the same corn would, against all law and reason, pay tithes twice; for that all, or the greatest part of such corn, was grown within the same parish, and the tenth thereof was paid to the respondent in the field; and if any was ground which grew elsewhere, the same in like

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manner

manner paid the tenth to the incumbent of the parish where it was grown: And lastly, this decree would introduce a new sort of tythe, and would affect a great number of inhabitants in *London*, and elsewhere, there being at least an hundred such mills used in the city of *London*, and some thousands of them in other parts of the kingdom, for which tithes were never paid nor demanded; but which, if the decree should be affirmed, must all pay tithes.

On the other side it was contended, that tithes were due both by the canon and statute law for new erected mills; and by the statute of *Articuli Cleri*, chap. 5. for new erected mills; and which statute expressly provides, that no prohibition shall lie in such case; that there have from time to time been several * resolutions and decrees for tithes of mills, and that the rest of the mills within the respondent's portions, had all along paid tithes, or a composition for the same, and every *modus* for a mill proved tithes to be due, if they were not discharged by such *modus*: that the tithe in question was a predial, not a personal tithe, and the tenth toll-dish was payable for the same; and so agreed both the canon law, and the custom and usage of this kingdom; and that it was not a double tithe, because it was paid by different persons, and for different purposes; in the first instance, by the owner of the corn, and in the second, by the owner of the mill.

After hearing counsel on this appeal, it was ordered, that the judges should be heard to this point, "*Whether the tithe payable for corn ground in a horse malt mill, is a personal, predial, or mixed tithe, and in*

Decree reversed,
27 Feb. 1706. }
Journ. XVIII.
241. 3 Br. Ap.
in Parl. 157.
159.

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what manner of tithes is to be paid for corn ground in such mill, if any tithe is due from the same."

See this case under Hilary Term, 4 Anne, ante, 101, 106, 1087.

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In the House of Lords.

Newte and Chamberlain.

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pl. 3.

IT was adjudged in the House of Peers, on appeal from the court of *Exchequer*, that the tithes of a mill are personal tithes, against several seeming authorities or doubts in the books; and that in consequence of their being personal tithes, not the tenth toll or tenth dish of the corn ground belongs to the parson, but the tenth part of the clear profits, after the charges of erecting the mill, and the other charges of servants, horses, and other expences deducted.

See Chamberlain and Newte, and Newte and Chamberlain, in the table of cases prefixed to the first volume.

Hilary Term, 6 Anne.

March 5, A. D. 1707.

In the Exchequer.

Pole against Gardiner.

Prescriptions had
their beginning
before the time
of Richard the
First. 9 Vin.
Abr. 18. pl. 47.

OBJECTON was to a *modus*, that it was too great, and too near the value of the tithes in kind; prescriptions had their beginning before Richard the First, when it is probable, that twelve-pence

or

or eight-pence might have been the value of the inheritance; and therefore decreed in the *Exchequer* to be a composition, and not a *modus*, but reversed, for churches might have been endowed with more than the value of the tithes.

See this case by the name of Gardiner and Pole, under Trinity Term, 5 Anne, ante, 103.

Hilary Term, 9 Anne.

January, A. D. 1710.

In the *Exchequer*.

Mickleburgh against *Crisp*.

BILL brought by the rector of *S.* for tithes of beasts fed upon a common; defendant by answer insists, that the common extends into several parishes, and that the custom was, that every farmer should pay tithes to the rector where he lived; and that he lived in another parish, and he paid the tithes to that rector; but there being proof that the cattle was driven upon that part of the common that lies in *S.* there was a decree for the rector of *S.* but reversed, because the custom was good, there being no inclosures.

Custom, that every farmer should pay tithes to the rector where he lived, good. 9 *Vis. Abr.* 43. pl. 6.

See this case by the name of Crisp and Mickleburgh, under Trinity Term, 7 Anne, ante, 115.

Hilary Term, 2 Geo. I.

March 21, A. D. 1715.

In the *Exchequer*.

Turner against Wray.

Parson no right
to tithes belong-
ing to an abbey,
on the dissolu-
tion thereof,
9 *Vin. Abr.* 55.
pl. 14.

ABBOT seized in right of his abbey of a rec-
tory with all tithes, &c. the abbey is dissolv-
ed, and the crown grants the tithes, &c. the parson
disputes the tithes with the patentee, but bill dis-
missed.

*See this case by the name of Turner and Smith,
and others, under Trinity Term, 12 Anne, 123.*

Hilary Term, 3 Geo. I.

A. D. 1716.

In the *Exchequer*.

*Benson Impropiator of Bromley St. Leonard,
Middlesex, against Watkins, and others.*

Tithe of turnips
due twice yearly.
3 *Burn's Ecclef.*
Law, 453.

THE court declared the tithe of turnips to be
due, though sowed never so often in the same
year, and though upon the same land.

*See this case by the name of Benson against Watkins,
under this term, ante, p. 135.*

The

Hilary Term, 4 Geo. I.

1093

The following *modus*, viz.

Five shillings an acre for the tithe of winter corn,

Four shillings an acre for summer corn,

Two shillings and sixpence an acre for upland meadow; and

Three shillings an acre for low land, were set aside, as too big.

Modus set aside as too big. 3 Burn's Eccles. Law, 412.

Hilary Term, 4 Geo. I.

A. D. 1717.

In the *Exchequer*.

Lloyd against Small.

THE defendants insisted on several *modus* for all small tithes, arising out of their respective farms; but it appearing by their answer, that the small tithes in kind demanded by the bill, did not amount to more in that year, than the pretended *modus*, the *modus* were set aside.

Modus set aside, because the small tithes in kind did not amount to more than the modus themselves. 3 Burn's Eccles. Law, 412, 413.

January 23, A. D. 1717.

In the *Exchequer*.

Austin against Nicholas.

A Custom was for the vicar to have tithes for all pease and beans set, drilled, or sowed in rows in gardens, or like manner; afterwards a new improvement was found out to use a plow instead of a spade, yet such pease and beans shall pay tithes.

Vicar to have tithes of pease and beans in gardens, though a plow used instead of a spade. 9 Vin. Abr. 22. pl. 3.

See this case by the name of Nicholas and Elliot, under Hilary Term, 10 Anne, ante, 119.

Decree between
other parties
may be read as a
precedent, tho'
not as evidence.

A decree between other parties may be read as a precedent, though not as evidence. S. C.

12 Fin. Abr. 94. pl. 20.

Inquisition not
admitted to be
read, there be-
ing no commis-
sion to warrant

An inquisition not admitted to be read as evidence, there being no commission to warrant it. S. C.

12 Fin. Abr. 120. pl. 2.

Hilary Term, 5 Geo. I.

A. D. 1718.

In the *Exchequer*.

Lord *Arundel's* case.

Shobrook's case.

What evidence
books of ac-
count, *memoran-
dums, &c.*
12 Vin. Abr.
255. pl. 1.

BOOKS of account, *memorandums, &c.* of a preceding vicar, may be made use of, as evidence for his successor to support his demands, in case of tithes, &c. by *Bury*, Chief Baron, and Baron *Price*.

A. D. 1718.

In the *Exchequer*.

Gregory against *Luttrell*,

Evidence to sup-
port payments,
in cases of tithes,
is allowed more
extensively, than
in any other case.
12 Vin. Abr.
255. pl. 3.

A Paper 1639, signed, &c. to prove a composition for rabbits on *Brampton* burroughs, by the predecessor of the present vicar, &c. was read by the Barons (*Page besitants*) though no direct proof, that the defendant claimed under the person that signed it, the warren (that is, burroughs) &c. it appearing,

pearing, that it was of an ancient date, that the estates mentioned in it, were as defendant now had; and there being proof of the hand-writing of one of the witnesses, &c. but afterwards held, that it was not sufficient to support plaintiff's demand for the uncertainty, as that there might be a warren at another place, or a piece of ground so called, or the composition might be for other tithes arising out of the warren.

Michaelmas Term, 6 Geo. I.

A. D. 1719.

In the *Exchequer*.

Crow, tenant under the church of *Rochester*,
of the tithes in the hamlet of *Modingham*, in
the parish of *Chippinghurst* in *Kent*,

against

Stoddart.

THE court declared the tithe of turnips sowed after corn, and eaten by unprofitable cattle, to be due; though it was urged to be an improvement of the land, and that the parson has the benefit of it the next year.

Tithes due for
turnips sowed
after corn, and
eaten by unpro-
fitable cattle.
3 *Burn's Eccles.*
Law, 453.

became intitled, amongst other tithes, to the tithe of all hops growing in the said parishes.

The defendant, during all such time, occupied some hop grounds in both or one of the said parishes; and in the year 1745, being the first year the plaintiff was intitled to receive tithes in the said parishes, the defendant did not set forth such tithe, but afterwards paid the plaintiff twenty guineas in lieu thereof.

The defendant constantly every year afterwards, until the year 1751, set forth the tithe of his hops in the same manner as the occupiers of other hop ground did, *viz.* by setting out every tenth measure, after the hops were picked from the bind or stem.

In the year 1751, the defendant had about ten acres of hop ground in the said parish of *Mickleham*, and about eighteen acres and an half in the said parish of *Dorking*, and had great quantities of hops growing thereon, and, before he gathered them, caused application to be made to the plaintiff, to accept a composition in lieu of the tithe thereof; but the defendant having previously declared, that he would not, at all events, pay above twenty shillings an acre for such composition, the plaintiff refused to treat with the defendant on that subject, and thereupon the defendant gave the plaintiff notice, that he would not set out the tithes as he had done for several years preceding, but would set out every tenth hill in his hop ground as the tithe thereof, by severing the binds or stems from the soil, and leaving the same on the poles standing; upon which the plaintiff told the messenger sent from the defendant, that such

such method was new, and contrary to law, and that he could not take his tithe in that manner; notwithstanding which, the defendant soon afterwards gathered all his hops, except every tenth hill, which he left ungathered, according to his notice, and refused to set out the tithe of any part of the hops that he gathered.

The plaintiff having never before heard of, or experienced that method of setting out the tithe of hops, and apprehending that he had no right to take down the defendant's hop-poles, or to gather the hops left thereon, did not meddle therewith, and was in hopes the defendant would alter his sentiments, and in an amicable manner pay the plaintiff for the tithe of the hops he had gathered that year; but instead thereof, in or about the month of *October* following, the defendant commenced an action at law against the plaintiff, for not taking away the tithe hops so pretended to have been set out as aforesaid.

The plaintiff being not only injured by the defendant's not setting out his tithe, but also harrassed by an action at law, was obliged to have recourse to a court of equity; and accordingly in *Michaelmas* Term, 1751, filed his bill in the court of *Exchequer* at *Westminster*, against the said defendant, for an account of his said hops, and to be paid for the tithe thereof, and for relief in the premises.

The defendant put in his answer to the said bill, and thereby admitted, that, in the year 1751, he had hops growing in the said parishes of *Mickleham* and *Dorking*, and that he gathered upwards of six ton weight, besides what he left ungathered, as aforesaid; and insisted, that he did not gather his

said hops, without truly setting forth the tithe thereof, but on the contrary did divide, separate, and set out the full tenth part thereof, by setting out every tenth hill upon which the hops grew, and by severing all the binds or stems upon every such tenth hill from the ground or soil, and by leaving the hops upon the binds or stems on every such tenth hill on the poles standing; and insisted, that the aforesaid manner of setting out the tithe, was the only legal method; and that the tithe of hops ought not by law to be set out after the same are picked from the bind or stem, and denied that there was any custom in *Mickleham* or *Derking*, for setting out the tithe of hops growing thereon.

But the defendant having likewise by his said answer suggested, that the plaintiff's predecessor, rector of *Mickleham*, did, at his own costs, cause to be picked from the binds or stems, the tenth of the hops growing in that parish, or did satisfy the occupiers of the hop-grounds for picking the same, and having likewise set forth several other matters relating to the defendant's paying for, and setting out his tithe of hops in the aforesaid preceding years, and his application to the plaintiff to take and accept of a composition for his tithe of hops in the year 1751, the plaintiff replied to the said answer, and the defendant rejoined, whereupon issue being joined, several witnesses were examined.

And publication soon after passing, on 24 *February*, 1753, the said cause came on to be heard in the said court of *Exchequer* at *Westminster*.

When the court was pleased to declare, that the method of setting out the tithe of hops insisted on by the

the defendant in his answer, was no good setting out of his tithe of hops; but that hops ought to be picked and gathered from the binds before they are titheable; and decreed, that the defendant should come to an account with the plaintiff for the value of the defendant's hops growing on his said lands, in the said parishes of *Mickleham* and *Dorking*, from *Lady-day*, 1751, when gathered and picked from the binds, and that the said defendant should satisfy and pay the plaintiff for the tithes thereof accordingly; the taking of which account was thereby referred to the deputy remembrancer of the said court; and further decreed, that the defendant should pay to the plaintiff his costs of the said suit to that time to be taxed by the said deputy remembrancer, and that an injunction should be awarded under the seal of the court, to stay the said defendant's proceedings at law, and the consideration of future costs, and all further directions were thereby reserved, till after the coming in of the said deputy remembrancer's said report.

*The Case of the * Defendant.*

The defendant has been for several years past, the occupier of two hundred and fifty acres of land in *Mickleham*, and the owner and occupier of eighty acres of land in *Dorking*; and the defendant intending by degrees to break up and convert several large parcels of the said lands into hop plantations, he, in the year 1743, at a very great expence, erected, on part of his said lands, a large hop kiln and other buildings necessary for manufacturing and preserving hops, he having before planted six acres two quarters and

* This case is taken from the appellants on the appeal.

SUPPLEMENT.

seven perches, or thereabouts, of his land in *Dorking* with hops, and made the usual preparations for breaking up, by degrees, and converting about twenty acres more of his lands, lying in the said parishes, into hop-grounds.

The plaintiff, in *February* 1744, was inducted into the rectory of *Mickleham*, in the county of *Surry*, and in *March* following into the vicarage of *Dorking*, in the said county and still is rector of *Mickleham* and vicar of *Dorking*, and thereby became intitled to all tithes, both great and small, yearly arising within the said parish of *Mickleham*; and titheable places thereof, and to all small tithes yearly arising within the said vicarage and parish of *Dorking*, and titheable places thereof.

In the year 1745, the defendant planted three acres more of his lands, lying in *Dorking*, with hops, and in the years 1747, 1748, and 1749, he caused sixteen acres and eight roods, or thereabouts, of his said land in *Mickleham* to be planted with hops, whereby his hop plantations were increased to twenty-six acres and an half; the annual value of those lands, before hops were planted by the defendant, did not exceed eight shillings an acre, and the tithe thereof, one year with another, was not worth two shillings an acre.

The year 1745, was the first year the defendant had hops growing upon his said six acres, two quarters of an acre, and seven perches of hop ground lying in the said parish of *Dorking*, after the plaintiff became vicar of that parish; and the defendant being informed, that the demand of tithe of hops in kind was unusual, and the taking the same by measure would

would bruise and hurt the hops, and lessen the value both of the plaintiff's nine-tenths, and the vicar's tenth, he, in *August* 1745, before he began to gather any of his hops, sent to the plaintiff and offered to pay him five pounds and five shillings, for the tithes of his hops growing in that year on the said six acres and two quarters, and seven perches of land, which the plaintiff refused to accept, and *insisted to receive his tithes thereof in kind, and that the defendant should set out the same by admeasuring the hops in baskets, after they were gathered and picked*; and it being represented to him on the behalf of the defendant, that such manner of setting out the tithe would be very prejudicial and inconvenient to both parties, as the hops by that means would be necessarily very much bruised, the flavour and condition thereof hurt, and the hops be thereby very much damaged, thereupon the plaintiff *acknowledged he was satisfied the same would be injured by such admeasurement, but nevertheless he would have his tithes set out in that manner.*

Previous to the hop harvest in the year 1746, the defendant being desirous, if possible, to live in peace with the plaintiff, and to have no dispute with him in relation to the said tithe, offered to pay him after the rate of *twenty shillings* an acre for the tithe of all hops, which the defendant then had, or should have, in the said parishes of *Mickleham* and *Dorking*, during the plaintiff's continuing rector and vicar thereof, but he absolutely refused to accept thereof, and insisted the defendant should set out the tithe thereof, *by first picking all his said hops, and then setting out the tithe thereof by admeasurement in bushels*; and it being again represented to him, that the hops would by that means be tumbled about and bruised, and be thereby greatly damaged, he answered, *that he was satisfied*

satisfied in that particular, but that nevertheless he insisted thereon; and then declared, that he formerly had the defendant in his power, for not setting out his tithe in the year 1745, and could have put him to great expence and trouble on that account; and threatened, that, in case the like should happen again, he would take advantage thereof.

That the defendant intimidated by such threats, and being desirous, if possible, to avoid contention, and not then apprehending the said method of setting out the tithes of his hops would turn out to be so grievous and injurious, as it has since appeared to be, the defendant let the plaintiff take his tithe of all the hops which grew upon the defendant's said plantations, in the years 1746, 1747, 1748, 1749, and 1750, *by measuring the same in their respective years, after they were picked and assorted, and the plaintiff's taking every tenth basket thereof for his tithe; by which means all the defendant's remaining nine parts, as well as the plaintiff's tenth part, were greatly bruised and damaged, and considerably reduced in value.*

It has been usual of late years for hop planters to direct their gatherers to pick or assort their hops into different pokes according to their different degrees of fineness and colour, *viz. the fine and the brown; and such assortment is the most material and expensive part of the manufacturing of hops; three times as much time and expence being required in picking and assorting hops into two different parcels, as is necessary in picking them into one poke when first gathered; and the defendant is advised it is unreasonable, that parsons claiming tithes should have the benefit of this part of the manufacture of hops, which costs above five pounds an acre, without making*

making any allowance, or contributing any share to the expence thereof.

The setting out the tithe of hops in the manner before mentioned, proving a very great loss to the defendant, and, on inquiry, being informed by persons concerned in the hop trade, that it had taken its rise chiefly from the imprudence of a few lay impropiators; and that, wherever it had been insisted on, it had proved so excessive a burthen on the hop planters, that they had generally destroyed their hop plantations, as unable to submit to it, the defendant therefore hopes the plaintiff, on that account, and in respect of the damage to his one tenth part, as well as to the defendant's nine parts, will not insist thereon for the future, but will agree to accept of a reasonable satisfaction for the same, or, at least, to their being set out in a manner less injurious, which however the plaintiff absolutely refuses to do.

The defendant finding he must be obliged to throw up his hop plantations, and turn them again into arable and pasture, unless he can be relieved with respect to the tithe thereof, and being advised, *that the setting out every tenth hill of hops in the plantations, and severing the vines thereof by cutting them from the soil,* would be a fair and equal way of setting out the tithe in kind, he on 28 August 1751, hoping the plaintiff would have agreed thereto, or, if not, that the question, at what time, and in what manner, hops were titheable, might come to be properly and solemnly determined, sent again to the plaintiff, and proposed to him to submit the question, in relation to the tithes of hops, to the determination of persons of eminent dignity and distinction in the county of Surry, and against whom there could be

* *Quare* if it should not be binds. J. R.

no objection; this the plaintiff refused to agree to; then the defendant again offered and proposed to pay him, after the rate of twenty shilling an acre, in lieu of tithes, for all the defendant's hop grounds, although four acres, part thereof, had been planted but one year, and to continue to pay after that rate so long as he continued to keep up his hop plantation; but the plaintiff rejected that also; and thereupon the defendant then gave him notice, that he would, on *Monday* following, begin to gather his hops, and would regularly set out every tenth hill, through all his hop plantation, as the tithe thereof, by severing the binds of the hops from the soil, and leaving the same on the poles; and that he would, in the same manner, daily set out the tithe of his hops, in order that the plaintiff might be present at the respective times of setting out the tithe, and might carry away the same in due time; but the plaintiff declared, he would not accept his tithe in that manner, *but that he expected the whole crop should be gathered, and afterwards measured in baskets*; and that every tenth basket of hops, after being so measured, should be set out, and allotted to him, for his tithe thereof; and yet the plaintiff, at the same time, admitted this manner of tithing *was inconvenient, and would damage the hops*.

The defendant repeated his proposals to the plaintiff, the next and several subsequent days, and delayed gathering his hops for several days, in hopes he would have come to a reasonable agreement with him; but, that being absolutely refused, the defendant, in the beginning of *September 1751*, began to gather his hops, and previously set out the plaintiff's tithe thereof, by fairly numbering the several hills whereon his hops grew, and marking and setting out every

every tenth hill for the tithe thereof; as the same happened; also cutting and severing the binds or stems on which the hops on every such tenth hill grew, from the soil, and left the same on the poles; and did not in any one day set out or cut the binds of any larger quantity of the hops on the said tenth hills, than what the plaintiff might have caused to be picked, gathered, and carried away, the same day, without prejudice or damage; the defendant renewed such notice to the plaintiff every day, whilst his hop-gathering continued; and gathered and carried away the hops growing on the remaining nine parts of the said hills; but the plaintiff refused to gather the hops growing on the hills marked and set out for his tithe, or to come into any measures for preserving the same from being spoiled and destroyed; on 12 September 1751, defendant sent another message to the plaintiff, and again offered to pay him after the rate of twenty shillings an acre for that year's tithe of his hops, notwithstanding he had, as aforesaid, set out his tithe, which, by being left on the poles standing, and not taken away, was spoiled or destroyed; but the plaintiff also rejected this offer, and declared, *he would not agree with the defendant, as long as he lived, or to that effect.*

The plaintiff having permitted the hops, which grew on every tenth hill of the defendant's said plantations, to continue for several months upon the poles, until the same were rotted, and having thereby hindered the defendant from dressing and cultivating his said hop plantations, the defendant, in order to have the said question, relating to the manner and time of tithing of hops, tried at law, brought his action against the plaintiff, for the damages occasioned by his not removing the same.

The

The plaintiff, to prevent the question being tried by a jury, exhibited his bill in the court of *Exchequer*, after *Michaelmas* Term, 1751, and thereby insisted, that the manner in which the defendant had, in the year 1751, set out the tithe of his hops by leaving the hops on every tenth hill for the plaintiff, and severing the binds from the soil, was not a proper method of setting out such tithe, *but that the tithe of hops within the said parishes, ought, by law, to be set out after the same are picked from the bind or stem*; and by his bill prayed, that the defendant might come to an account with him for the tithe of all the hops, which, since 25 *March* then last, the defendant had growing, gathered, and picked, within the said parishes of *Mickleham* and *Derking*, and pay to him what should be due and owing on such account.

The defendant soon after put in his answer to the bill, and issue being joined several witnesses were examined, who fully proved the circumstances of the case, as before set forth, and that the method of tithing, insisted on by the plaintiff, was not only injurious to the hop planters, but even tended to the destruction of the hop plantations in general, and that the method of tithing, pursued by the defendant, was a fair and equitable method of setting out the said tithe; *and this evidence stands entirely uncontradicted.*

Then follows the decree, which runs verbatim as in the case of the plaintiff, which see, and this cause on appeal, under Easter Term, 27 Geo. II. ante, p. 467. and in the next page.

Easter

Easter Term, 27 Geo. II.

May 15, A. D. 1753.

In the House of Lords.

* *Jonatban Tyers,* — Appellant.

Philip Walton, Clerk, Rector of
Mickleham, and Vicar of Dor- } Respondent.
king, in the County of Surry, }

The Case of the † Appellants.

THE appellant, apprehending himself to be aggrieved by the decree pronounced by the court of *Exchequer* in this cause, [which see under *Michaelmas Term, 25 Geo. II. and Hilary Term, 27 Geo. II.*] humbly appealed from the same to your lordships; and is advised the same ought to be reversed (among others) for the following

R E A S O N S.

As they are verbatim the same as set out ante, p. 467, 468. the reader is referred to them.

For these and other reasons, to be mentioned at the hearing, it is humbly hoped, your lordships will reverse the decree.

The Respondent's ‡ Case.

From the decree the appellant hath appealed to your lordships, in order, that the method hitherto

* The title of this cause is wrong, *ante*, p. 465.

† See the case of the defendant in this cause under *Michaelmas Term, 25 Geo. II.* p. 465. and under *Easter Term, 27 Geo. II.* p. 467.

‡ See the case of the plaintiff in this cause, under *Michaelmas Term, 25 Geo. II.* and under *Hilary Term, 27 Geo. II.*

S U P P L E M E N T.

established by law, for setting out the tithe of hops, may be varied.

But the respondent humbly hopes, that the said decree is just, and agreeable to the rules of law and equity, and that the same shall be affirmed for the following (amongst other)

R E A S O N S.

Wherefore the respondent humbly hopes, that the said decree will be affirmed, and the appeal dismissed with costs.

May 15, A. D. 1753.

Judgment of the
House.

Ordered and adjudged, that the decree of the court of *Exchequer* be affirmed.

See the original cause, under Michaelmas Term, 25 Geo. II. and see under Easter Term, 27 Geo. II.

* They are the same as in the appeal, which see *ante*, p. 462, 463.

APPENDIX.

I. ACTS of PARLIAMENT.

II. PRECEDENTS.

I. ACTS of PARLIAMENT.

EDWARD the SECOND.

9 EDW. II. (*Articuli Cleri*) CHAP. I.

No Prohibition shall be granted where Tythes be demanded, but where Money for them.

“**F**IRST, Whereas lay men do purchase prohibitions generally, upon tithes, obventions, oblations, mortuaries, redemption of penance, violent laying hands on clerks or converts, and in cases of defamation, in which cases spiritual penance ought to be enjoined. The King doth answer, That in tithes, oblations, obventions, mortuaries (when they are propounded under these names) the Kings prohibition shall hold no place, although for the long withholding of the same, the money may be esteemed at a sum certain. But if a clerk or a religious man do sell his tithes being gathered in his barn, or elsewhere, to any man for money, if the money be demanded before a spiritual judge, the King’s prohibition shall lie, for by the sale the spiritual goods are made tem-

No prohibition shall be granted, but where money for them.

ACTS of PARLIAMENT.

poral,* and the tithes turned into chattels. *Regist.* 34. 36. *Fitz. N. B.* 40. &c. 50 & *Rass. pla.* 484. &c. 2 *Hen. V.* 10. 8 *Ed. IV.* 13. *Fitz. Abr. tit. Prohib.* 18. 29. 27."

CHAP. 2.

Debate upon the Right of Tithes exceeding the fourth Part.

"ALSO if debate do arise upon the right of tithes having his original from the right of the patronage and the quantity of the same tithes do come unto the fourth part of the goods of the church, the King's prohibition shall hold place, if the cause come before a judge spiritual. See *Reg.* 45. 50. *F. N. B.* 30. 42. 32 *Hen. VI.* 13. 28 *Hen. VI.* 20. 12 *Edw. IV.* 13. *Langham and Baker, T.* 10 *Car. II. ante,* p. 25.

CHAP. 5.

No Prohibition where Tithe is demanded of a new Mill.

No prohibition where tithe is granted for a new mill.

"ALSO if any do erect in his ground a * mill of † new, and after the parson of the same place demandeth tithe for the same, the Kings prohibition doth issue in this form: ‡ *Quia de tali molendino hactenus decimæ non fuerunt solutæ, prohibemus, &c. Et sententiam excommunicationis, si quam hac occasione promulgaveritis, revocetis omnino. The answer.* In such

* See *Gibf. Cod. Jur. Eccles. Angl.* 666.

† See *Bol. Law of Tithes*, 127.

‡ Because tithes have not been heretofore paid for such mill, we prohibit, &c. and if you have therefore pronounced sentence of excommunication, absolutely, recall it.

case the Kings * prohibition was never granted by the Kings assent, nor never shall, which hath decreed that it shall not hereafter lie in such cases. *Dr. Burgess's Case*, T. 4 Car. I. ante, p. 14."

EDWARD the THIRD.

45 EDW. III. CHAP. 3.

A Prohibition shall be granted where a Suit shall be commenced in a Spiritual Court for Sylva cedua.

"**ITEM**, at the complaint of the said great men and commons, shewing by their petition, that whereas they sell their great wood of the age of twenty year, or of greater age, to merchants to their own profit, or in aid of the Kingin his wars, parsons and vicars of holy church do implead and draw the said merchants in the spiritual court for the tithes of the said wood in the name of this word called *Sylva cedua* whereby they cannot sell their woods to the very value, to the great damage of them and of the realm: it is ordained and established, that a prohibition in this case shall be granted, and upon the same an attachment, as it hath been used before this time. *Regist.* 44. *Fitz.* N. B. 54. *B. Rast. pla.* 489. *Cook*, li. 11. 48. 50 *Edw.* III. 10. 11 *Hen.* VIII. 9 *Hen.* IV. 56. *Plowd.* 470. *Bro. difmes* 14. *Fitz. Attach. sur prohibition* 1.

A prohibition shall be granted where a suit is commenced in the spiritual court for *Sylva cedua*.

See 2 *Inst.* 643. *Rel. Abr.* 640. *Buckle and Vanacre*, H. 3 *Wil.* and *Mary*, ante, p. 73. *Greenaway and the Earl of Kent*, H. 8 *Geo.* I. ante, p. 161. *Walton and Lady Mary Tryon*, M. 25 *Geo.* II. ante, p. 452.

* See *Cre. Jac.* 429. See also *Rel. Abr.* 641. 3 *Bulstr.* 212. *Chamberlain and Newte*, E. 4 *Anne*, ante, 101. H. 5 *Anne*, ante, 107. 1090. *Talbot and May*, M. 16 *Geo.* II. ante, 398.

HENRY the EIGHTH.

26 HEN. VIII. CHAP. 3.

First Fruits of all Dignities Spiritual shall be paid to the King, &c.

Sect. I. “**F**ORASMUCH as it is, and of very duty ought to be the natural inclination of all good people, like most faithful, loving, and obedient subjects, sincerely and willingly to desire to provide, not only for the publick weal of their native country, but also for the supportation, maintenance, and defence of the royal estate of their most dread, benign, and gracious Sovereign Lord, upon whom, and in whom dependeth all their joy and wealth : in whom also is united and knit so princely a heart and courage, mixed with mercy, wisdom, and justice : and also a natural affection joyned to the same, as by the great, ineffimable, and benevolent arguments thereof being most bountifully, largely, and many times shewed, ministred, and approved towards his loving and obedient subjects, hath well appeared : which requireth a like correspondence of gratitude to be considered, according to their most bounden duties. Wherefore his said humble and obedient subjects, as well the lords spiritual and temporal, as the commons in this present parliament assembled, calling to their remembrance, not only the manifold and innumerable benefits, daily administred by his Highness to them all, and to all other the residue of his subjects of this realm : but also how long time his Majesty hath most victoriously, by his high wisdom and policy, protected, defended and governed this his realm, and maintained his people and subjects of the same in tranquility, peace, unity, quietness and wealth.

wealth. And also considering what great, excessive, and inestimable charges his Highness hath heretofore been at, and sustained by the space of five and twenty whole years, and also daily sustaineth for the maintenance, tuition, and defence of this his realm, and his loving subjects of the same, which cannot be sustained and born without some honourable provision and remedy may be made, found, provided, and ordained for maintenance thereof: do therefore desire and most humbly pray, that for the more surety of continuance and augmentation of his Highness's royal estate, being not only now recognized (as he always indeed hath heretofore been) the only supreme head in earth, next and immediately under God, of the church of *England*, but also their most assured and undoubted natural Sovereign Liege Lord, and King, having the whole governance, tuition, defence; and maintenance of this his realme, and most loving obedient subjects of the same. It may therefore be ordained and enacted by his Highness, and the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, in manner and form following.

8. 2. " That is to say, that the King's Highness, his heirs and successors Kings of this realm, shall have and enjoy from time to time to endure for ever, of every such person and persons, which at any time after the first day of *January* next coming shall be nominated, elected, perfected, presented, collated, or by any other means appointed, to have any archbishoprick, bishoprick, abbacy, monastery, priory, college, hospital, archdeaconry, deanry, provostship, prebend, parsonage, vicarage, chauntry, free-chapel, or other dignity, benefice,

The first fruits and profits for one year of every spiritual living is granted to the King.

office, or promotion spiritual within this realm, or elsewhere within any of the King's dominions, of what name, nature, or quality soever they be, or to whose foundation, patronage or gifts soever they belong, the first fruits, revenues and profits for one year of every such archbishoprick, bishoprick, abbey, monastery, priory, college, hospital, archdeaconry, deanry, provostship, prebend, parsonage, vicarage, chauntry, free-chapel, or other dignity, benefice, office, or promotion spiritual aforementioned, whereunto any such person or persons after the said first day of *January*, be nominated, elected, perfected, presented, collated, or by any other means appointed. And that every such person and persons, before any actual or real possession, or meddling with the profits of any such archbishoprick, bishoprick, abbacy, monastery, college, hospital, deanry, provostship, prebend, parsonage, vicarage, chauntry, free-chapel, priory, or other dignity, benefice, office, or promotion spiritual, shall satisfy, content, and pay, or compound or agree to pay to the King's use, at reasonable days, vpon good sureties, the said first fruits and profits for one year.

Every spiritual person shall be bound for his first fruits before his actual possession of his benefice.

Commissioners to search for the value of benefices, and to compound for first fruits.

S. 3. " And be it also enacted by authority aforesaid, that the chancellor of *England*, and master of the rolls for the time being, jointly and severally, or such other person and persons as shall please the King's Highness, his heirs or successors from time to time, at his or their pleasure, to name and depute by commission or commissions under the great seal, shall have power and authority, as well to examine and search for the just and true value of the said first fruits and profits by all ways and means that they can, as to compound and agree for the rate of the said first fruits and profits; as to stall and limit reasonable

sonable days of payment thereof upon good and sufficient surety or sureties, by writings obligatory by their discretions. And if composition or agreement be had or made for the said first fruits before the said lord chancellor, or master of the Rolls, that then the writings obligatory, or money taken for the same, shall rest, remain and abide in the hanaper of the King's chancery, there safely to be kept to the King's use, and the money to be due of such writings obligatory, or to be received in hand by reason of any such composition, shall be paid in the said hanaper, to the clerk of the hanaper for the time being. And that the said clerk of the hanaper, shall make a true and a just account thereof, like as he is bound to do of the money received of the profits of the King's great seal. And if composition or agreement be had or made for the said first fruits, afore any other person or persons to be deputed to the King's Highness, his heirs or successors by commission under his great seal, that then the writings obligatory, and money taken for the same, shall be delivered to the treasurer of the King's most honourable chamber for the time being, or elsewhere, to whom it shall please the King's Highness his heirs or successors, to give authority by commission under the great seal, to receive the same.

The money taken for first fruits shall be delivered to the treasurer of the chamber.

S. 4. " And it is also ordained and enacted by authority afore said, That every writing of acquittance subscribed with the hand and name of the clerk of the hanaper, and treasurer of the chamber, or other commissioners afore said, or any of them, witnessing the receipt of the said first fruits, or any part thereof, shall be as good and effectual against the King's Highness, his heirs and successors, to every person and persons having the same, for so much money as shall

Whose acquittance shall be sufficient discharge for the first fruits.

An obligation
for the first
fruits, shall be
of the same
strength that
the statute of
the Staple is.

shall be mentioned, to be received and contained in every such acquittance, as if such acquittance were, or had been lawfully had and obtained in the King's name under the King's great seal, and so shall be admitted, accepted, allowed, and taken in every of the King's courts. And that all writings obligatory to be taken for payment of the said first fruits, by, and afore the said lord chancellor, or master of the rolls, or by, and afore any other person or persons, to be deputed to compound and agree for the said first fruits, as is aforesaid, shall be of the same strength, force, vertue, quality and effect to all intents and purposes as writings obligatory heretofore made by any lay person by authority of the statute of the *Staple-Inn*. And that upon certificate hereafter to be made into the King's chancery, of any such writings obligatory to be taken for payment of such first fruits, like process and execution shall be thereupon made against any person spiritual and temporal, as hath been accustomed to be made against any lay person upon certificate of writings obligatory of the said statute of the staple. And that no person shall be compelled to pay for any writing obligatory to be made for the said payment of the said first fruits, above eight-pence, nor for any acquittance to be made for receipt of such first fruits above four-pence. And that such person and persons as shall be deputed by the King's Highness by commission under the great seal, to compound and agree for the said first fruits, shall at the end of every six months next after the date of their commission, and so from six months to six months, deliver or cause to be delivered unto the treasurer of the chamber for the time being, or elsewhere, to such commissioners as shall be appointed, as aforesaid to receive the same, as well such money, as all such specialties and bonds, as they shall have taken for the
payment

payment of the said first fruits by indenture to be made between them and the said treasurer, or other commissioners as is aforesaid, containing the certainty and number of the sums of money, and specialties and bonds by them taken and received. And if any person or persons to whom any deputation shall be made by commission, to compound and agree for the payment of the said first fruits, their heirs, executors, or administrators, conceal, or imbezil any of the said specialties or bonds taken for the sure payment of the said first fruits, and do not deliver them according to the tenor of this act, that then every such offender shall forfeit that office of deputation, and over that make fine and ransom at the King's own pleasure and will.

The penalty of commissioners, concealing bonds taken for the payment of first fruits.

S. 5. " And it is also enacted by authority aforesaid, that if any person or persons which at any time after the said first day of *January*, shall be nominated, elected, presented, collated, or by any other means appointed to any of the dignities, offices, benefices, or other promotions spiritual before-mentioned, do enter into the actual and real possession thereof, or meddle with the profits thereof, before they shall have truly satisfied, and paid to the King's use the first fruits and profits thereof for one year, or else shall have agreed or compounded for payment of the same at reasonable days upon good sureties, in manner and form as by this act is above specified, that then every such person and persons so doing and offending, and being thereof convicted by presentment, verdict, confession, or witness before the said lord chancellor, or such other as shall have authority by commission, to compound for the said first fruits and profits as is aforesaid, shall be accepted and taken an intruder upon the King's possession. And that they, their executors,

Who so entreat upon his spiritual living before composition shall forfeit double the value of the first fruits.

or

or administrators, shall pay to the use of the King's Highness for every such offence, so much sum of money, as shall amount to the double value of the said first fruits and profits of such dignities, benefices, or other spiritual promotions wherein they shall so enter, and intrude before the payment of the said first fruits and profits for one year thereof, or before due agreement made for the same in manner and form as is above rehearsed.

All first fruits payable to other persons shall cease and be paid to the King.

§. 6. " And be it further enacted by authority aforesaid, that the first fruits of benefices heretofore accustomed to be paid to the bishop of *Norwich* within his diocese, and to the archdeacon of *Richmond* within his archeaconry, or to any other person or persons within this realm, or any other the King's dominions, shall from the said first day of *January* cease and be extinct, and no longer be paid, but only to the King's Highness, his heirs and successors, in such form as is above-mentioned in this act.

The bishops may give institution and induction.

§. 7. " Provided always, that archbishops and bishops, and all other having jurisdiction, ordinary, may give and deliver letters of institution and induction, as they might do before the making of this act, without any offence of any article contained in this act, any thing in this act contained to the contrary thereof notwithstanding.

Priors removeable shall pay no first fruits.

§. 8. " Provided also, that where there be divers cells appertaining to monasteries and priories and that the priors of such cells be named and removeable from time to time, at the only wills and pleasures of their masters and sovereigns of the monasteries and priories, whereunto such cells belong : that the priors of such cells shall not be compelled to pay any first fruits,

fruits, by virtue or authority of this act: any thing in this act contained to the contrary thereof notwithstanding: but that the first fruits and profits of every such cell shall be paid to the King's Highness, his heirs and successors, whensoever and as often as any person shall be nominated, elected, preferred, or collated to the monastery or priory, whereunto such cells belong.

S. 9. " And over this be it enacted by authority aforesaid, that the Kings Majesty his heirs and successors, kings of this realm, for more augmentation and maintenance of the royal estate of his imperial crown and dignity of supreme head of the church of England, shall yearly have, take, enjoy, and receive, united and knit to his imperial crown for ever, one yearly rent, or pension, amounting to the value of the tenth part of all the revenues, rents, farms, tithes, offerings, emoluments, and of all other profits, as well called spiritual as temporal, now appertaining or belonging, or that hereafter shall belong to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanry, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free-chapel or other benefice or promotion spiritual, of what name, nature, or quality soever they be, within any diocese of this realm, or in *Wales*, the said pension or annual rent to be yearly paid for ever to our said sovereign lord, to his heirs and successors kings of this realm, at the feast of the nativity of our Lord God, and the first payment thereof to begin at the feast of the nativity of our Lord God, which shall be in the year of our Lord God, MDXXXV. And to be paid yearly by such as shall be appointed to have the collection thereof by

A yearly tenth of all spiritual livings given to the King.

The tenth must be paid at Christmas.

this

this act, in such manner and form as shall hereafter be limited by this act, before the first day of *April* yearly next following, after the said feast of the nativity of our Lord.

S: 13. "And it is ordained and enacted by authority aforesaid, that the said yearly rent and pension shall be taxed, rated, levied, perceived, and paid to the Kings use, his heirs and successors, in manner and form hereafter to be declared by this act. That is to say, that the Chancellor of *England* for the time being, shall have power and authority to direct into every diocese in this realm and in *Wales*, several commissions in the King's name, under his great seal, as well to the archbishop or bishop of every such diocese, as to such other person or persons as the King's Highness shall name and appoint, commanding and authorising the said commissioners to be named in every such commission, or three of them at the least; to examine, search and enquire by all the ways and means that they can by their discretions, of and for the true and just, whole and entire yearly values of all the manors, lands, tenements, hereditaments, rents, tithes, offerings, emoluments and all other profits as well spiritual as temporal, appertaining or belonging to any archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanry, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chauntry, free-chapel, or of any other benefice or promotion spiritual within the limits of their commission, with a clause to be contained in every such commission, that the said commissioners, or three of them at the least, shall deduct and allow in the making and rating of the said yearly values of the premises, these deductions following and none other:

Commissions shall be awarded into every diocese to enquire of the value of every spiritual living.

other: that is to say, the rents resolute to the chief lords, and all other annual and perpetual rents and charges, which any spiritual person or persons been bounden yearly to pay to any person or persons, to their heirs and successors for ever, or to give yearly in alms by reason of any foundation or ordinance, and all fees for stewards, receivers, bailiffs and auditors, and synods, and proxies, with another clause to be also contained in every such commission; that the said commissioners, or three of them at the least, shall certify under their seals at such days as shall be limited by the said commissions, as well the whole and entire value, as the deductions aforesaid of every archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanry, hospital, college, house collegiate, prebend, cathedral church, conventual church, parsonage, vicarage, chantry, free-chapel, and all other benefits and promotions spiritual.

Deductions to be defalked out of spiritual livings.

The commissioners certify the value of every spiritual living.

S. 11. And it is ordained and enacted by authority aforesaid, that the said commissioners that shall be so appointed, or three of them at the least, shall have full power and authority to do, accomplish, and execute the effects and contents of their said commissions in every behalf: and that every the said commissioners, before they shall execute the said commission, shall receive and take a corporal oath before the Lord Chancellor, or before such other as shall be appointed by the said Chancellor, by the King's writ of *dedimus potestatem*, that they shall diligently and truly, without favour, affection, fraud, cunning, deceit, dread, or corruption, do fulfil and execute the whole effects and contents expressed in every such commission within the limits thereof, to the cunning, wits, and uttermost of their powers.

The commissioners shall be sworn indifferently to execute that commission.

S. 12. " And it is ordained and enacted by authority aforesaid, that after such certificate made by the said commissioners, the said yearly rent and pension of the tenth part shall be set, taxed, rated, and taken justly, and truly, and indifferently by the treasurer, chancellor, chamberlain and barons of the King's *Exchequer*, off and out of the clear yearly value of the premises, that shall be above the deductions afore mentioned, and none otherwise. And that every archbishoprick, bishoprick, abbacy, monastery, priory, archdeaconry, deanry, hospital, college, house collegiate, prebend, cathedral church, collegiate church, conventual church, parsonage, vicarage, chantry, free-chapel, or other benefice or promotion spiritual, shall be severally and distinctly taxed, charged and chargeable in the proper diocese where they been, for the payment of such portion of the said tenth part as shall be taxed and set upon them by authority of this act. That is to say, every of them by and for themselves, shall be taxed, charged, and chargeable in the proper diocese, where they been, for the tenth part of the yearly value of their possessions and profits to them belonging, wheresoever their said possessions and profits shall happen to be, or lye in any part of this realm, or elsewhere, in any of the King's dominions, and that none of them shall be charged or chargeable for the payment of the other charge or portion.

Every spiritual person shall be charged for his tenths in the diocese where they be, though their possessions lie in other dioceses.

Bishops shall be charged to the collection of the tenths in their dioceses.

Stat. 32 Hen. VIII. chap. 47.
34 Hen. VIII. chap. 17.

S. 13. " And it is also enacted by authority aforesaid, that after such certificate made into the King's *Exchequer*, and tax set of the tenth part, in form above remembered, every archbishop and bishop now being, and that hereafter shall be, shall be charged and chargeable, to levy, collect, and receive within their proper dioceses, as well in places exempt,

as not exempt, all such sums of money, wherewith the dignities, benefices, and other promotions spiritual aforementioned within their diocess, chargeable by this act, shall be set, taxed, and charged towards the payment of the said yearly pension, and shall pay and content the said sums of money, yearly, before the said first day of *April*, to the treasurer of the King's chamber, for the time being, or to any other person or persons, whom it shall please the King's Highness to appoint to receive the same. And that every of the said archbishops and bishops, their executors and administrators, and the possessions of their dignities and churches, shall stand charged and chargeable, for the sure and true payment of such sums of money, as they shall collect and receive of the said yearly rent and pension.

S. 14. " And that the treasurer, chancellor, chamberlain, and barons of the King's *Exchequer*, shall yearly cause process to be made by their discretions for non-payment of the said pension, or yearly rent, or any parcel thereof, against every archbishop and bishop of this realm, that is to say, against every archbishop and bishop for so much part and portion of the said pension and yearly rent, wherewith the dignities, benefices, and other promotions spiritual aforementioned within the diocess, shall be taxed and charged, so that every of the said archbishops and bishops shall be charged and chargeable, for the rate and portion of the said yearly rent and pension, set and taxed within his own peculiar diocess, and none otherwise.

Process against a bishop for the payment of all tenths within his diocess.

S. 15. " And be it also enacted by authority aforesaid, that every archbishop, and bishop, shall have power and authority to levy, take and perceive by authority of censures of the church, or by distress

By what means the bishop shall levy the tenths of every spiritual promotion.
Stat. 2 and 3
Edw. VI.
chap. 20.

or otherwise by their discretion, all such sums of money as shall be rated, taxed, and set to go out of the lands, tenements, hereditaments, profits, and emoluments of any dignity, office, benefice, or other place or promotion spiritual, within their dioceses, towards the payment of the said yearly rent and pension: and that no replevin, prohibition, nor *superfedeas*, upon any excommunication, nor any other writ or impediment shall be sued, allowed, or obeyed, for any person or persons, making default of payment of such part and portion as they shall be rated and taxed unto by authority of this act, till such time as they have truly satisfied their said part and portion to them allotted of the said yearly rent and pension.

Who shall be collectors in time of vacation of a bishoprick.

S. 16. " And it is also enacted by authority aforesaid, that whensoever, and as often as any of the archbishopricks or bishopricks happen to be void, that then the dean and chapter of the cathedral church, or the prior and convent, or chapter, or convent of the monastery or cathedral church, where the see of such archbishoprick or bishoprick, being void, shall happen to be, during the time of the vacation thereof, and their executors, administrators and possessions shall be charged and chargeable to do, and cause to be done, all and every thing and things, for the due executions of this act, within the diocese of such archbishoprick or bishoprick being void, as the same archbishop or bishop of the see being void, should have done, according as it is limited and appointed by this act, or by any thing therein contained.

The penalty for default of payment of tenths.

S. 17. " And it is ordained and enacted by authority aforesaid, that if any sum of money being once due by

by any incumbent of any of the dignities, benefices, or promotions spiritual afore specified, charged to the payment of the said yearly pension and annual rent, be reasonably demanded and required any time after the said feast of the nativity of our Lord, at their dignities, * monasteries, priories, hospitals, colleges, churches, chantries, or houses, by the † archbishop or bishop, or such as shall be charged with the collection of any part of the said pension, or by any other their ministers, servants or officers, to pay such portion of the said pension and yearly rent, as they shall be taxed and assessed, be not truly contented and paid unto such archbishop or bishop, or their ministers and officers, and to such other person or persons, or their ministers or servants, as shall have the charge of collection thereof, every year yearly at the time of such request and demand thereof, or else within forty days next after every such request at the furthest, that then every incumbent, making such default of payment, after such default thereof certified into the King's *Exchequer* in writing under the seals of any archbishop or bishop, or of such as be limited and charged to the collection of the said pension by this act, shall be adjudged deprived, *ipso facto*, of all such dignities, benefices, pensions, and promotions spiritual, as any such incumbent, making such default, shall have at the time of such certificate to be made, or at any time after. So that all such dignities, benefices, pension, and promotion spiritual, which any incumbent, making such default of payment, shall have at the time of any such certificate to be made, or at any time after, shall be clearly void and destitute of incumbent in the law to all

* *Dyn.* 297.† *Reg.* pl. 505.

intents and purposes, as if such incumbent making such default of payment were dead indeed.

The bishop making a certificate of any incumbent omitting to pay his tenths, shall be discharged thereof. *Stat. 7 Ed. 6. 4. Stat. 32 Hen. VIII. 22.*

S. 18. "And it is ordained and enacted by authority aforesaid, that if any archbishop or bishop, or any other limited and charged by this act, to the collection and payment of the said pension and annual rent, do make a certificate unto the King's *Exchequer*, before the said first day of *April*, or at any time within four and twenty days next after the said first day of *April*, that they according to this act have reasonably required and demanded any incumbent of any dignity, benefice, or promotion spiritual, chargeable by this act to pay such part and portion of the said pension and annnal rent, as they shall happen to be assessed unto, and that such incumbent, so being required, hath not paid his said part and portion, according to the form and effect of this act, that then every such archbishop and bishop, and every other person having the charge by this act, for collection and payment of the said pension and annual rent, upon every such certificate, shall be discharged and acquitted for ever against the King, his heirs and successors, of and for all such sums of money, as any such incumbent, against whom such certificate shall be made, should or ought to have paid by this act. And that then in every such case the treasurer, chancellor, chamberlain, and barons of the King's *Exchequer*, shall devise and direct upon every such certificate, such process out of the King's *Exchequer*, against every such incumbent, against whom any such certificate shall be made, and their executors and administrators, or, for insufficiency of them, against the successors of every such incumbent, whereby the King's highness, his heirs and successors,

Process shall be awarded against the refusers to pay their tenths.

fers, shall and may be truly answered, paid and contented, of such portion and part as the incumbent, against whom any such certificate shall be made, was taxed and assessed for his dignities, benefices, or promotion spiritual, chargeable by this act.

S. 19. " And it is also ordained and enacted, by authority aforesaid, that all manner of acquittances, made by the treasurer of the King's chamber, or by any other such commissioners, as shall be appointed, as is aforesaid, to receive the said pension, or any part thereof, and subscribed with the name of the said treasurer, or any other such commissioners for the payment of the said pension or annual rent, or any part thereof, to any such person or persons as be limited and charged with the collection thereof, shall be of as good strength, force, virtue, and effect to the parties having the same, as if they were made in the King's name under his great seal, and so shall be allowed, admitted, and accepted in all courts of this realm: and that the treasurer, chancellor, chamberlain, and barons of the King's *Exchequer*, shall, by virtue and authority of this act, as well admit and allow such acquittances, as all such certificates as shall be made against any such incumbent for default of payment, as is abovesaid, upon the account of every archbishop and bishop, and of every other person limited and charged by this act, for the collection and payment of the said pension and annual rent, without any writ, bill, or warrant to be sued in or for that behalf.

Whose acquittance shall be a discharge for the payment of the tenths.

S. 20. " And that no manner of officer of the King's *Exchequer* shall take of any archbishop or bishop, or of any other persons, having charge with the collection and payment of the said pension or annual rent,

Nothing shall be taken in the *Exchequer* of a bishop or his collector for his account, or *quietus est*.

any manner reward, or thing for making their account or *quittus est*, in the same *Exchequer*, or for any manner of thing appertaining to the same, concerning the said pension and annual rent, upon pain of every officer, doing contrary to this act, to lose and forfeit his office, and make fine to the King at his will and pleasure.

S. 21. "And forasmuch as every incumbent of the dignities, benefices, and promotions spiritual aforementioned, shall be charged by this act to the payment of the tenth part of the value of their dignities, benefices, and promotions spiritual, without any deduction or allowance of such pension or pensions, wherewith some of them been charged to pay their predecessors, during their lives; or to other persons to the use of such their predecessors during their lives, it is therefore ordained and enacted by authority aforesaid, that it shall be lawful to every incumbent charged with any such pension, payable to any his predecessors, or to any to his use, to retain and keep in his hand the tenth part of every such pension: and that every such incumbent and his sureties, shall from henceforth be acquitted and discharged of the said tenth part of every such pension, by virtue and authority of this present act, any decree, ordinance, or assignment of any such ordinary, or any collateral writing, or surety made for such pension to any spiritual person or persons, or to any to their uses for term of their lives, in any wise notwithstanding. And that as well every incumbent, as such persons as stand bound for him, for payment of any such pensions, shall plead this act in every of the King's courts, for the clear extinguishment and discharge of the tenth part of every such pension.

They which pay pensions to others out of their spiritual living, may retain the tenth part thereof.

8. 22. " And be it also ordained and enacted by authority aforesaid, that no pension shall hereafter be assigned by the ordinary, or by any other manner of agreement by collateral surety, or otherwise, upon any resignation of any dignity, benefice or promotion spiritual, above the value of the third part of the dignity, benefice, or promotion spiritual resigned: and if any pension, amounting above the value of the third part of the dignity, benefice, or promotion spiritual heretofore resigned, be already limited and made sure, to any spiritual person or persons, by decree of the ordinary, or otherwise by any collateral surety, or hereafter shall happen to be assigned, and made sure to any person or persons spiritual, or to any other to their use, by decree of the ordinary, or by any other collateral surety, upon any resignation thereof, yet nevertheless the incumbent charged with such pension, nor his sureties collateral, shall not be compelled to pay any more pension, than the value of the third part of his dignity, benefice, or promotion spiritual, so resigned, shall amount unto; but shall, by authority of this act, be clearly acquitted, and discharged of so much of the said pension, as shall amount above the value of the third part of the dignity or benefice resigned: any decree of assignment of the ordinary, or any collateral writings, or sureties heretofore made, or hereafter to be had, or made for the same, to the contrary thereof notwithstanding.

No pension shall be reserved upon the resignation of a benefice above the value of the third part. *Stat. 23 Hen. chap. 20.*

8. 23. " And forasmuch as divers abbots and priors been charged to pay great pensions to sundry their predecessors yet living, to the great decay of their hospitalities and house-keeping: be it enacted by authority aforesaid, that every such predecessor of such abbots or priors, having any pension made sure

Abbots or priors paying pensions to their predecessors.

unto them, or to any to their use during their lives, amounting above the yearly value of forty pounds, shall from henceforth be defaulted and abated of the moiety and half deal of every such pension. And that every abbot and all other persons charged for the payment of such pension, above the said yearly value of forty pound, shall be clearly acquitted and discharged by authority of this act, of the moiety and half deal thereof for ever. Any decree or assignment thereof by the ordinary, or any writing or surety collateral, had or made for the surety thereof notwithstanding.

The prior of St.
Johns of Hierusa-
lem shall pay first
fruits and tenths.

S. 24. " And forasmuch as the lord prior of Saint *Johns of Hierusalem in England*, and his brethren, be not specially named and expressed in this act, whereby ambiguity might arise, whether they should be comprised within the limits of this act : it is therefore for plain declaration thereof enacted by authority aforesaid, that every person and persons which after the said first day of *January*, shall happen to be nominated, elected, collated, or by any other means appointed to the dignity of the said prior of Saint *Johns of Hierusalem in England*, or to any commandry appertaining unto the same, shall before their actual and real entry into the same dignity or commandry, or meddling with the profits thereof, satisfy and pay to the use of the King's Highness, his heirs and successors, the first fruits and profits thereof, for one whole year, or agree or compound for the same, at reasonable days in like manner and form, and upon like pains in every behalf, as archbishop and bishops, and other spiritual persons be bound to by virtue and authority of this act. And that also the prior of Saint *Johns* now being, and his successors, and every of his brethren having any commandry, and their suc-
cessors,

cessors, shall contribute and pay yearly to the King's Highness, his heirs and successors, one yearly rent and pension, amounting to the tenth part of all their possessions and profits, as well spiritual as temporal: and shall be charged, rated, taxed, and set to the contribution and payment of the said tenth part. And that also the said tenth part shall be levied, collected, and paid in such like manner and form, to all nitents and purposes, as the tenth part of other dignities and benefices spiritual shall be charged, taxed, set, levied, collected, and paid by authority of this act.

S. 25. " And forasmuch as in sundry and many cathedral churches, colleges and hospitals of this realm, there is, and time out of mind hath been, certain ordinances instituted and made, whereby the dean, provost, master, or other chief governor of such churches, colleges, and hospitals, hath a certain part and portion of the possessions and profits belonging to such church, colleges, and hospitals, all only limited and belonging to their offices and dignities: and every prebendary, brother, vicar, fellow, petty canon, and other ministers spiritual in such churches, colleges and hospitals, hath another portion, all only and distinctly limited, appertaining and belonging to their dignities and offices in such churches, hospitals and colleges: it is therefore provided and ordained by authority aforesaid, that such person and persons, which, at any time after the said first day of *January*, shall be nominated, elected, presented, presented, collated, or by other means appointed to be dean, provost, master, or other chief governor of such cathedral churches, colleges, or hospitals, shall be rated, compound and pay for their first fruits, but only after the rate of the

They which in one corporation have several possessions belonging to their dignities, shall pay for their own possessions, and not for others.

the yearly value of the possession and profits, limited and belonging to their office and dignity.

S. 26. " And that every other person and persons, that, after the said first day of *January*, shall be nominated, elected, presented, preferred, collated, or by any other means appointed to have any prebend, brothership, fellowship, or to be any vicar or petty canon, or to have any other dignity, or office spiritual, in any such cathedral churches, colleges or hospitals, shall be rated, compound and pay for their first fruits, after the rate of the yearly value of the possessions and profits, limited and belonging to their dignities and offices, in such churches, colleges and hospitals, and none otherwise. Any thing in this act to the contrary hereof in any wise notwithstanding.

No first fruits shall be paid for a benefice being not above the yearly value of eight marks, except, &c.
Stat. 1 Edw. chap. 4.

S. 27. " Provided always, that such person or persons, that, after the said first day of *January*, shall be presented and collated to any parsonage or vicarage, whereof the yearly value shall not exceed eight marks, shall not be compelled to pay any first fruits for any such parsonage, or vicarage, whereunto they shall be presented or collated, not being above the said yearly value of eight marks: except that the incumbent presented or collated to such parsonage or vicarage, whereof the yearly value shall not exceed eight marks, do live three years, next and immediately following after his institution, induction, or collation, to such parsonage or vicarage, and if such incumbent do live after the said three years, then he or his executors or administrators shall pay at days to be limited after the said years upon sureties (as is aforesaid) the first fruits of every such parsonage and vicarage. And that in every obligation

tion to be made by any incumbent of such parsonage or vicarage and his successors for payment of first fruits of such parsonage or vicarage; and there shall be contained a proviso, that if the said incumbent die within three years next after the date of the institution, induction, or collation of the said parsonage or vicarage, that then the obligation shall be void and of none effect. Any thing in this act to the contrary hereof notwithstanding.

A proviso in the obligation if the incumbent die within three years

S. 28. " And over this where the clergy of the province of *Canterbury* in their convocation have granted unto the King's Highness one hundred thousand pounds, and the clergy of the province of *York*, eighteen thousand eight hundred and forty pound, ten pence, to be paid by even portions in five years, and that which could not be levied thereof in the same five years, to be paid in the sixth year, as by the tenor of their several grants thereof made in their several convocations more plainly appeareth : it may please the King's Majesty of his excellent goodness, in consideration that the said yearly pension and annual rent shall be yearly from henceforth duly paid and satisfied to his Highness, and to his heirs and successors, according to the tenor, form, purport and effect of this present act : that it may be enacted by authority of this present parliament, that the clergy of the said province of *Canterbury*, and every of them, shall be discharged, and acquitted against our said Sovereign Lord, his heirs and successors, of, and for the twenty thousands pound, parcel of the said hundred thousand pounds, which should be paid in the fifth year of payment, limited by their grant : and that the clergy of the said province of *York* shall likewise be discharged and acquitted of and for all such sums of money,

How much the clergy of the two provinces of *Canterbury* and *York* shall be yearly discharged of, and wherefore.

money, parcel of the said eighteen thousand eight hundred and forty pound ten pence, which should be paid in the fifth year of payment limited by their grant : any thing in their said several grants thereof made in any wise notwithstanding.

S. 29. " Provided always, that all the residue of sums of money, which be yet to be paid and not released nor discharged by this act, shall be truly paid and satisfied to our said Sovereign Lord, his heirs or successors, according to the tenor, form, and effect of their said several grants.

Fees which any prelate is bound to pay for temporal justice.

S. 30. " Provided also, that all such fees, which any archbishop, bishop, abbot, prior, or other prelate of the church is bounden yearly to pay to any chancellor, master of the rolls, justices, sheriffs, or other officers or ministers of record, for temporal justice to be done or ministered within their diocess or jurisdictions, shall be allowed and deducted by the commissioners aforesaid, in and upon the valuation of the dignities, monasteries, priories, or churches chargeable with such fees : any thing in this act to the contrary hereof notwithstanding."

See stat. 26 Hen. VIII. *chap.* 17. 27 Hen. VIII. *chap.* 8. 28 Hen. VIII. *chap.* 11. 1 Eliz. *chap.* 4. *Archbishop of York's case.* E. 22 Eliz. *ante*, p. 2. *Bishop of Litchfield and Coventry and Beacon*, E. 24 Eliz. *ante*, p. 6.

27 HEN. VIII. CHAP. 20.

Tithes shall be paid according to the custom of the Parish, &c.

Sect. I. “**F**OR AS MUCH as divers numbers of evil disposed persons inhabited in sundry counties, cities, towns and places of this realm, having no respect to their duties to Almighty God, but against right, and good conscience, have attempted to subtract and withhold in some places, the whole, and in some places great parts of their tithes and oblations, as well personal, as predial due unto God, and holy church, and pursuing such their detestable enormities, and injuries, have attempted in late time past to disobey, contemn and despise the process, laws, and decrees of the ecclesiastical courts of this realm, in more temerous and large manner than before this time hath been seen. For reformation of which said injuries, and for unity and peace to be preserved amongst the King's subjects of this realm, our Sovereign Lord the King, being supreme head in earth under God, of the church of *England*, willing the spiritual rights and duties of that church to be preserved, continued and maintained, hath ordained and enacted by authority of this present parliament, That every of his subjects of this realm of *England*, *Ireland*, *Wales*, and *Calais*, and marches of the same, according to the ecclesiastical laws and ordinances of his church of *England*, and after the laudable usages and customs of their parish, or other place where he dwelleth, or occupieth, shall yield and pay his tithes, and offerings, and other duties of holy church, and that for such subtractions of any of the said tithes, offerings, or other duties, the parson, vicar, curate, or other party in that behalf grieved, may, by due process of the

Tithes shall be paid according to the custom of the parish where they be due.

The offender in
subtracting of
tithes, shall be
convened before
the ordinary.

the King's ecclesiastical laws of the church in *England*, convent the person or persons so offending before his ordinary, or other competent judge of this realm, having authority to hear and determine the right of tithes, and also to compel the same person or persons offending, to do and yield their said duties in that behalf. And in case the ordinary of the diocese, or his commissary, or the archdeacon or his official, or any other competent judge aforesaid, for any contempt, contumacy, disobedience, or other misdemeanor of the party defendant, make information and request to any of the King's most honourable council, or to the justices of the peace of the shire where such offender dwelleth, to assist and aid the same ordinary, commissary, archdeacon, official, or judge, to order or reform any such person in any cause before rehearsed: that then he of the King's said honourable council, or such two justices of peace, whereof the one to be of the *quorum*, to whom such information or request shall be made, shall have full power and authority by virtue of this act, to attach, or cause to be attached, the person or persons against whom such information or request shall be made, and to commit the same person, or persons to ward, there to remain without bail and mainprise, till that he or they shall have found sufficient surety, to be bound by recognisance, or otherwise before the King's said counsellor, or justice of peace or any other like counsellor, or justice of peace to the use of our said Sovereign Lord the King, to give due obedience to the process, proceedings, decrees, and sentences of the ecclesiastical court of this realm, wherein such suit or matter for the premisses shall depend or be. And that every of the King's said counsellors, or two justices of the peace, whereof the one to be of the *quorum*, as is aforesaid, shall have full power and authority by virtue

The offender
shall be bound
by two justices of
peace, &c. to
obey the ordi-
nary's sentence.

virtue of this act, to take, receive and record recognisances and obligations, in any of the causes above written.

S. 2. " Provided alway, that this act, or any thing therein contained, shall not extend to any inhabitant of the city of *London*, for or concerning any manner of tithe, offering, or other ecclesiastical duty, grown, and due to be paid or yielded within the same city, because there is another order made for the payment of tithes, and other duties within the said city.

This act shall not extend to the citizens of *London*.

S. 3. " Provided also, that every person or persons, being party or parties to any such suit, shall, and may, make and have his and their lawful action, demand or prosecution, appeals, prohibitions, and all other their lawful defences and remedies in every such suit, according to the said ecclesiastical laws, and laws and statutes of this realm, in as ample and liberal manner and form as they or any of them might have had, if this act had never been made: any thing in this act above written notwithstanding.

Every person shall have his demand and defence, according to the laws ecclesiastical.

S. 4. " Provided always, and be it enacted by authority aforesaid, that this act for recovering of tithes, nor any thing therein contained, shall take force and effect, but only until such time as the King's Highness, and such other thirty-two persons, which his Highness shall name and appoint for the making and establishing of such laws, as his Highness shall affirm and ratify to be called the ecclesiastical laws of the church of *England*. And after the said laws so ratified and confirmed as is aforesaid, that then the said tithes to be paid to every ecclesiastical person, according to such laws, and none otherwise.

See stat. 32 Hen. VIII. chap. 7. 2 Edw. VI. chap. 13. R. Raym. 323. 3 Burn's. Ecclesi. Law, 488. Fox and Bardwell, E. 8 Geo. II. ante, p. 292.

All Monasteries given to the King which have not lands above two hundred pounds by the year.

All monasteries given to the King which have not about two hundred pound lands.

Sect. I. “ **H**IS Majesty shall have and enjoy to him and his heirs for ever, all and singular such monasteries, priories, and other religious houses of monks, canons, and nuns, of what kinds of diversities of habits, rules, or order soever they be called or named, which have not in lands, tenements, rents, tithes, portions, and other hereditaments, above the clear yearly value of two hundred pound. And in like manner shall have and enjoy all the sites and circuits, of every such religious houses, and all and singular the manors, granges, messes, lands, tenements, rents, reversions, services, tithes, pensions, churches, chapels, advowsons, patronages, annuities, rights, conditions, and other hereditaments, appertaining or belonging to every such monastery, priory or religious house, not having as is aforesaid, above the said clear yearly value of two hundred pound, in as large and ample manner as the abbots, priors, abbesses, and other governors of such monasteries, priories, and other religious houses now have, or ought to have the same in the right of their houses. And that also his Highness shall have to him and to his heirs, all and singular such monasteries, abbies, and priories, which at any time within one year next before the making of this act, hath been given and granted to his Majesty, by any abbot, prior, abbess, or prioress, under their covent seal, or that otherwise hath been suppressed or dissolved, and all and singular the manors, lands, tenements, rents, reversions, tithe

The King shall have all monasteries before assured to him, or that have been suppressed.

tithes, pensions, portions, churches, chapels, advowsons, patronages, rights, entries, conditions, and all other interests, and hereditaments, to the same monasteries, abbies and priories, or to any of them appertaining or belonging. To have and to hold; all and singular the premises, with all their rights, profits, jurisdictions and commodities, unto the King's Majesty, and his heirs and assigns for ever, to do and use therewith his and their own wills to the pleasure of Almighty God, and to the honour and profit of this realm.

S. 2. " And be it enacted by the authority of this present parliament, that all and every person and persons, and bodies politick, which now have, or hereafter shall have any letters patents of the King's Highness, of any of the sites, circuits, manors, lands, tenements, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, tithes, entries, conditions, interests, or other hereditaments, which appertained to any monasteries, abbies, or priories heretofore given or granted to the King's Highness, or otherwise suppressed or dissolved, or which appertaineth to any of the monasteries, abbies, priories, or other religious houses, that shall be suppressed or dissolved by the authority of this act, shall have and enjoy the said sites, circuits, manors, lands, tenements, reats, reversions, services, tithes, pensions, portions, churches, chapels, advowsons, patronages, tithes, entries, conditions, interests, and all other hereditaments contained and expressed in their letters patents now being thereof made, and to be contained and specified in any letters patents hereafter to be made, according to the tenor, purport and effect of any such letters patents: and shall also have all such actions,

They shall enjoy those abbey lands to whom the King hath given them.

suits, entries, and remedies to all intents and purposes, for any thing or things contained in every such letters patents now made, or to be contained in such letters hereafter to be made in like manner, form and conditions, as the abbots, priors, abbeſſes, prioſteſſes, and other chief governors of any religious houſes which had the ſame, might or ought to have had, if they had not been ſuppreſſed or diſſolved.

A ſaving of the right of others.

S. 3. “ Saving to every perſon and perſons, and bodies politick, their heirs and ſucceſſors (other than the abbots, priors, abbeſſes, prioſteſſes, or other chief governors of the ſame religious houſes ſpecified in this act, and the covents of the ſame, and their ſucceſſors, and ſuch as pretend to be founders, patrons or donors of ſuch religious houſes, of any lands, tenements, or hereditaments, belonging to the ſame, and their heirs and ſucceſſors) all ſuch right, title, intereſt, poſſeſſions, leaſes for years, rents, ſervices, annuities, commodities, fees, liberties and livings, penſions, portions, cottodies, ſynodies, priories and all other profits, as they or any of them hath, ought or might have had, in or to any of the ſaid monaſteries, abbies, priories, or other religious houſes, or in or to any manors, lands, tenements, rents, reverſions, tiſhes, penſions, portions, or other hereditaments, appertaining or belonging, or that appertained to any of the ſaid monaſteries, priories or other religious houſes, as if the ſame monaſteries, priories and other religious houſes had not been ſuppreſſed by this act, but had continued in their eſſential bodies and ſtates that they now be, or were in.

Fraudulent aſſurances made by governors of houſes before their diſſolutions ſhall be void.

S. 4. “ Provided always, and be it enacted, that ſo much as divers of the chief governors of ſuch religious houſes, &c. have lately fraudulently and craftily made ſcoffments, eſtates, gifts, grants, and leaſes, under the covent ſeals, or ſuffered recoveries of

of their manors, lands, tenements, and hereditaments, in fee simple, fee tail, for term of life or lives, or for years, or charged the same with rents or corrodies, to the great decay and diminution of the houses: that all such crafty and fraudulent recoveries, feoffments, estates, gifts, grants, and leases, and every of them made by any of the said chief governours of such religious houses, under their covent seals, within one year next before the making of this act, shall be utterly void and of none effect. Provided always, that such person and persons as have leases for term of life, and years, whereupon is reserved the old rents and terms accustomed or used in such religious houses, and have bought any livery or living in any such houses, shall have and enjoy their said leases, offices, fees, corrodies, liberties, and livings, as if this act had never been made.

§. 5. " And it is further enacted, that the King's Highness shall have and enjoy to his own proper use, all such ornaments, jewels, goods, chattels, and debts, which appertained or belonged to any of the chief governors of the said monasteries or religious houses in the right of their said monasteries or houses, at the first day of *March* in the year of our Lord God 1535, or any time sithen whersoever, or to whose possession soever, they shall come or be found, except only such beasts, grain, and woods, and such other like cattle and revenues as they have sold before the said first day of *March*, or sithen, for the necessary or reasonable expences or charges of any the said monasteries or houses.

Ornaments, jewels, goods, chattels, debts of monasteries given to the King.

§. 6. " And be it likewise enacted, that the King's Highness shall have and enjoy according to this act, the actual and real possession of all and singular such monasteries, priories, and other religious

The King shall have the natural possession of the abbey lands.

houses, as shall appear by the said certificate remaining in the King's *Exchequer*, not to have in lands, tenements, rents, tithes, portions, and other hereditaments, above the said clear yearly value of two hundred pounds: so that his Highness may lawfully give, grant, and dispose them, or any of them, at his will and pleasure, to the honour of God, and the wealth of this realm, without further inquisitions or offices to be had or found for the same.

A proviso for the cells of other monasteries being under obedience.

S. 7. " Provided always, that this act, or any thing therein contained, shall not extend nor be prejudicial to any abbots or priors of any monasteries or priories, being certified into the King's *exchequer*, to have in possessions and profits spiritual and temporal, above the said clear yearly value of two hundred pounds, for, or concerning such cells of religious houses, appertaining or belonging to their monasteries or priories, in which cells the priors or other chief governours thereof, be under the obedience of the abbots or priors, to whom such cells belonging, as the monks or canons of the covent of their monasteries or priories, and cannot sue, nor be sued by the laws of this realm, or by their own proper names, for the possession or other things appertaining to such cells, whereof they be priors or governours, but must sue and be sued in and by the names of the abbots or priors, to whom they be now obediencers, and to whom such cells belong. And also the priors or governours, dative or removeable from time to time, and accounts of the profits of such cells, at the only pleasure and will of the abbots and priors to whom such cells belong. But that every such cell shall be, and remain undissolved in the same estate, quality, and condition, as if this act had never been made, any thing in this act to the contrary hereof notwithstanding.

8. Saving

8. " Saving always, and reserving unto every person and persons, being founders, patrons or donors of any abbies, priories, or other religious houses, that shall be suppressed by this act, their heirs and successors, all such right, title, interest, possession, rents, annuities, fees, offices, leases, commons, and all other profits whatsoever they be, which any of them have or should have had, without fraud or covin by any manner of means, or otherwise than by reason or occasion of the dissolution of the said abbies, priories, or other religious houses, into or upon any of the said abbies, priories, or other religious houses, whereof they be founders, patrons, or donors, or into, or upon any lands, tenements, or other hereditaments, appertaining or belonging to the same, in like manner, form and condition, as other persons or bodies politic be saved by this act, as is afore rehearsed, and as if the said abbies, priories, or other religious houses, had not been suppressed and dissolved by this act, but had continued still in their essential bodies and estates as they be now, any thing in this act to the contrary thereof notwithstanding.

The right of
founders and
patrons saved.

8. 9. " And if any person or persons, bodies politic or corporate, that shall be bounden by this act, do not keep an honest household of husbandry and tillage, in manner and form as is aforesaid, that then he or they so offending, shall forfeit to the King's Highness for every month offending, six pounds, thirteen shillings and four-pence, to be recovered to his use in any of his courts of record.

8. 13. " And over that it is enacted, that all justices of peace in every shire, where any such offence shall be committed and done, contrary to the true

Justices of peace
shall enquire of,
and punish of-
fenders.

ACTS of PARLIAMENT.

meaning and intent of this present act, shall in every quarter and general sessions within the limit of their condition, inquire of the premises, and shall have full power and authority to hear and determine the same, and to tax and assess no less fine for every of the said offences, than is afore limited for the same offence, and estreats thereof to be made and certified in the King's *Exchequer*, according, and at such time and form, as other estreats of fines, issues and amerciaments been made by the same justices.

By this act, about three hundred and fourscore houses were dissolved, and a revenue of about thirty or thirty-two thousand pounds a year came to the crown, besides about one hundred thousand pounds in plate and pearls; some say, that ten thousand persons were hereby sent to seek their fortunes in the wide world, without any other allowance than forty shillings, and a new gown to some few of them; others say, that such of the religious as desired to continue their profession, were (according to the aforesaid act) allowed to go into the greater monasteries; and such as chose to go into the world, being priests, had every one the above-mentioned allowance, and some of them (for their readiness to surrender) got small pensions for life.

The suppression of these houses occasioned great discontents, fomented probably by the secular as well as regular clergy, which at length broke out into open rebellion; but the rebellion being appeased, the King resolved to suppress the rest of the monasteries, and thereupon appointed a new visitation, requiring the visitors to examine every thing that related either to the conversation of the religious, or their affection to the King and the supremacy, or to their

their cheats; impostures, or superstitions, or how they were affected during the late commotions; this caused the greatest abbies to be surrendered apace; for some of the religious having been faulty in the late rebellion, were liable to the King's displeasure, and surrendered their houses to save their lives; some began to like the reformation, and were upon that account easily persuaded to it; others, seeing their dissolution approaching, had so much embezzled their revenues, that they were scarce able to keep up their houses; a great many monks were executed for having been in the rebellion; and no doubt but many were prevailed upon by the visitors, who endeavoured, both by threats and promises, to get their resignations. 2 *Burn's. Ecclef. Law*, 479.

See Stat. 28 Hen. VIII. chap. 11. 35 Hen. VIII. chap. 14. 37 Hen. VIII. chap. 20. Downes and Mooreman, et c contra, Hilary Term, 11 Geo. I. ante, p. 202.

28 HEN. VIII. C H A P. 11.

Fruits taken during the Vacation of a Benefice, shall be restored to the next Incumbent, whose Charge for first Fruits shall begin from the first Vacation.

Sec. 1. "FORASMUCH as in the statute of the payment unto the King's Majesty, his heirs and successors, of the first fruits of spiritual promotions, offices, benefices, and dignities, within this realm, and other the King's dominions, express mention and declaration is not had, nor from what time the year shall be accounted, in which the

^a See St. Tr. XI. 24, 25.

first fruits shall be due and payable to his Highness, that is, to wit, whether immediately from the death, resignation, or deprivation, of every incumbent, or from the time of admission or new taking of possession in every such promotion. See 26 Hen. VIII. chap. 3.

The ordinaries delay to institute clerks, for their private gain.

S. 2. " And also by reason that in the same statute it is not declared who shall have the fruits, tithes, and other profits of the said benefices, offices, promotions, and dignities spiritual, during the time of vacation thereof, divers of the archbishops and bishops of this realm, have not only, when the time of perceiving and of taking tithes (that is to say, wool, lamb, corn and hay, and of tithes usually paid at the holy time of *Easter*) hath approached, deferred the collation of such benefices as have been of their own patronage, but also have, upon presentations of clerks made unto them by the just patrons, protracted and deferred to institute, induct and admit the same clerks, to the intent that they might have and perceive to their own use, the same tithes growing, during the vacation: so that through such delays (over and above the first fruits, which be justly due to the King's Highness) they have been constrained also to lose all, or the most part of one year's profits of their benefices and promotions, and to serve the cure at their and their friends proper costs and charges, or utterly to forsake and give over their benefices and promotions, to their great loss and hindrance.

The next incumbents charged to the King, shall begin from the first vacation of the benefice.

S. 3. " For reformation whereof, it is ordained and enacted, by the King our Sovereign Lord, with the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that the said year in which the

the first fruits shall be paid to the King's Grace, shall begin, and be accounted immediately after the avoidance or vacation of any such benefice or promotions spiritual afore rehearsed. And that the tithes, fruits, oblations, obventions, emoluments, commodities, advantages, rents, and all other whatsoever revenues, casualties, or profits certain and uncertain, offering or belonging to any archdeaconry, deanery, prebend, parsonage, vicarage, hospital, warden-ship, provostship, or other spiritual promotion, benefice, dignity or office, (chauntries only except) within this realm, or other the King's dominions, growing, rising or coming, during the time of vacation of the same promotion spiritual, shall belong, and offer to such person, as shall be thereunto next presented, promoted, instituted, inducted, or admitted, and to his executors, toward the payment of the first fruits to the King's Highness, his heirs and successors: any usage, custom, liberty, privilege, or prescription to the contrary had, used, or being in any wise notwithstanding.

The fruits taken during the vacation of a benefice, shall be restored to the next incumbent.
Coke pla. fo. 368.

S. 4. " And it is also enacted by the authority aforesaid, that if any archbishop, bishop, archdeacon, ordinary, or any other person or persons; to their uses and behoof, at any time heretofore since the first day of *May* last past, have perceived, received, or taken, or at any time hereafter do perceive, receive, or take the fruits, tithes, obventions, oblations, emoluments, commodities, revenues, rents, advantages, profits, or casualties, coming, growing, or belonging, or which hereafter shall come, grow, offer, or belong to any archdeaconry, deanery, prebend, parsonage, vicarage, hospital, warden-ship, provostship, or other spiritual promotion, benefice, dignity or office (chauntries only except) within

within this realm, or other the King's dominions, during the vacation of such archdeaconry, deanery, prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, benefice, dignity or office (chauntries only excepted.)

The forfeiture of the ordinary which receiveth the fruits of a benefice during the vacation, and doth not restore them to the next incumbent.

S. 5. " And the same upon reasonable request from henceforth to be made, doth not render, restore, satisfy, content, and pay to the next incumbent, being lawfully instituted, inducted, or admitted to such archdeaconry, deanery, prebend, parsonage, or vicarage, or other promotion, benefice, dignity, or office spiritual, except before excepted: or do let or interrupt the said incumbent to have the same: that then every archbishop, bishop, archdeacon, ordinary, or other person so doing, shall forfeit, and lose the treble value of so much as he shall then have received of the fruits of every prebend, parsonage, vicarage, hospital, wardenship, provostship, or other spiritual promotion, whereof he shall so perceive, receive, or detain, let, or interrupt the incumbent, or perceive, receive, and have the fruits, tithes, obventions, oblations, emoluments, commodities, revenues, rents, advantages, profits, or casualties: the moiety of which forfeiture shall be to the King our Sovereign Lord, and the other moiety thereof to the incumbent of the same prebend, parsonage or vicarage, or other spiritual promotion, to be recovered in any of the King's courts, by action, bill, plaint, information, or otherwise, in which action or suit the defendant shall not be admitted to wage his law, nor any protection, or essoine shall be unto the defendant allowed.

What part of the fruits of a benefice the or-

S. 6. " Provided always, that it shall be lawful to every archbishop, bishop, archdeacon and ordinary, their

their officers and ministers, to retain in his or their custody, so much of the tithes, fruits, obventions, oblations, emoluments, commodities, advantages, rents, revenues, casualties and profits, as shall amount to pay unto such person or persons, as hath or shall serve or keep the cure of such archdeaconry, deanery, prebend, parsonage, or vicarage, or other spiritual promotion, during the vacation, his or their reasonable stipend or salary. And also for the collection, gathering, and levying of such tithes, fruits, emoluments, rents and other profits, arising and growing during the vacation aforesaid: any thing in this act contained to the contrary in any wise notwithstanding.

Ordinary may retain in his hands, and for what causes.

S. 7. " Provided also, and be it further enacted by the authority aforesaid, that in case any of the incumbents aforesaid happen to die, and before his death hath caused any of his glebe lands to be manured and sown, at his proper costs and charges, with any corn or grain: that then, in that case, all and every of the said incumbents may make and declare their testaments of all the profits of the corn growing upon the said glebe lands, so manured and sown. Any thing contained in this present act in any wise notwithstanding.

The incumbents may declare their wills of any corn sown by them upon their glebe lands

S. 8. And where also before this time divers and many parsons, vicars, and other spiritual persons, being seised for term of their lives, of and in the said spiritual promotions aforesaid, as well for great sums of money to them before hand paid, as for other causes and considerations, have let in farm for term of years, by sufficient writings, their said

parsonages,

parsonages, vicarages, and other spiritual promotions, or part thereof, unto divers and many of the King's subjects, and after such leases by them so made, the lessors thereof have often times used to resign their said benefices, or spiritual promotions, so demised and letten in farm; by reason of which resignation, and other the acts of the said lessors, the said benefices, and other spiritual promotions, have been void, and the title and interests of the said leases, have been thereby adnichilate, and of none effect in the law, contrary to right and good conscience. For reformation whereof, and for a quietness the better hereafter to be had and continued between the King's subjects; be it enacted by authority of this present parliament, that from the aforesaid first day of *May* last past, no manner of such lease, by sufficient writing heretofore made, nor hereafter to be made by any spiritual person within this realm of *England*, *Wales*, or the marches of the same, to any lay person, of any parsonage, vicarage, or other spiritual promotion aforesaid, within this realm, upon which lease the rent and services reserved, with other the yearly charges of the lease, as in serving the cure and otherwise, shall amount within forty shillings by the year, of as much as the said parsonage, vicarage, or other spiritual promotion aforesaid, so letten, is rated and valued at, upon the King's books, for paying the first fruits, shall be adjudged void, adnichilate, or determined, by reason of any such resignation, or other avoidance of the said benefice or spiritual promotion, so letten by the only act of the said lessor, but that every such lessee or grantee of any such benefices or spiritual promotions aforesaid, their executors or assigns, shall have and may enjoy their terms and interests of, and in the same, for the term of ~~five~~ years, to be accounted next and immediately af-

If a spiritual person do demise his benefice for years, and after doth resign or die, how long the lessee may enjoy it, altered by stat. 1 & 2 *Phil.* and *Mary*, chap. 27.

ter the said avoidance, if the said leasor do so long live, and the lease so by him before made, do so long continue and endure. And that after such avoidance, the successor or successors of every such leasor, shall and may distrain for the rent and services so reserved, and have their actions of debt, and all other advantages by way of action, entry, or otherwise, against the said lessee, his executors or assigns, for recovery of the said rent, and covenants upon the said lease reserved, as the leasor thereof might have had, if no such avoidance had been had.

S. 9. " And further, be it enacted by the authority aforesaid, that if hereafter it happen any such leasor to decease, and die before the end of the term by him so made, and that there be one year at least to come of the said term; that then it shall be lawful to the lessee thereof, his executors or assigns, to hold and enjoy their said lease to the end of the same year, wherein he is so entered at the time of his said leasor's death, if his said lease do so long continue, bearing and paying unto the successor of every such leasor, all such rent and services, as for the remnant of the said year shall upon every such lease be due: for the recovery whereof the said successor shall and may have all such ways and advantages, as before is limited and given to the successor, where his predecessor maketh such lease and resigneth.

S. 10. " Provided alway, that every successor after the death of his predecessor, may and shall have upon one month's warning after the time of his induction, the mansion-house of every such parsonage, vicarage, or other spiritual promotion aforesaid, with the glebe belonging to the same, not being sown at the time of his said predecessor's death, for maintenance

The successor shall have the parsonage house, and the glebe not sown.

nance of his household, deducting therefore in his rent as heretofore hath been borne for the same, or as it is reasonably worth: any thing in this said act contained to the contrary notwithstanding.

How the curate shall be paid his wages, if the fruit be not sufficient.

S. 11, "Provided alway, that if the fruits of the vacation of the said spiritual promotions be not sufficient to pay the curate's stipend and wages for serving the cure the vacation time, that then the same time to be borne and paid by the next incumbent within fourteen days next after that he hath the possession of the said promotions spiritual. 1 *Elix.* chap. 4.

Doctor Godolphin [*Report. Canon. 52.*] says, that after the death of a prebendary, the dean and chapter shall have the profits; but by sect. 3. of the above statute, the profits of a prebend, during the vacation, shall go to the successor, towards the payment of his first fruits.

In order to reconcile which, Dr. Burn [2 *Burn's Eccles. Law*, 82, 108.] observes, that perhaps the distinction may be this; that the issues of those possessions, which he hath in common with the rest of the chapter, shall, after his death, be divided among the surviving members of the chapter; but the profits of the possessions which he hath in his separate capacity, as a sole corporation of himself, shall be and enure to his successor.

See, *Rel. Abr.* 655. *Gibf. Cod. Jur. Eccles.* 662, 749. *Rel. Rep.* 62. *Bentham and Alston, Easter*, 1 *Will. and Mary*, ante, p. 69. *Bishop of London and Beaumont*, *Mich.* 10 *Geo. I.* ante, p. 198. *Jones and Barrett*, *Mich.* 11 *Geo. I.* ante, p. 204.

31 HEN. VIII. CHAP. 13.

New Leases made of Manors belonging to Monasteries dissolved, and assured to the King, shall take effect.

Stat. 1. “ **W**HERE divers and sundry abbots, priors, abbeesses, prioresses, and other ecclesiastical governours and governesses, of divers monasteries, abbatbies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places within this our Sovereign Lord the King's realm of *England* and *Wales*, of their own free and voluntary minds, good wille, and assents, without constraint, coercion, or compulsion of any manner of person or persons, fithen the 4th day of *February*, the twenty seventh year of the reign of our now most dread Sovereign Lord, by the due order and course of the common laws of this his realm of *England*, and by their sufficient writings of record under their covenant and common seals, have severally given, granted, and by the same their writings severally confirmed all their said monasteries, abbatbies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, and all their sites, circuits, and precincts of the same, and all and singular their manors, lordships, granges meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, churches, chapels, advowsons, patronages, annuities, rights, entries, conditions, commons, leets, courts, liberties, privileges, and franchises, appertaining, or in any wise belonging to any such monastery, abbathy, priory, nunnery, college, hospital, house of friers, and other religious and ecclesiastical houses

Divers religious persons have surrounded the site of their monasteries, and all their lands to the King.

houses and places, or to any of them, by whatsoever name or corporation, they or any of them were then named or called, and of what order, habit, religion, or other kind or quality soever, they or any of them then were reputed, known, or taken : To have and to hold all the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses, and places, sites, circuits, precincts, manors, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premisses, to our said Sovereign Lord, his heirs and successors for ever, and the same the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, and other the premisses voluntarily as is afore-said, have renounced, left, and forsaken, and every of them hath renounced, left and forsaken.

Monasteries and their lands before surrendered or dissolved, given to the King.

§. 2. " Be it therefore enacted by the King our Sovereign Lord, and the Lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, that the King our Sovereign Lord, shall have, hold, possess and enjoy to him, his heirs and successors, for ever, all and singular such late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, of what kinds, natures, qualities, or diversities of habits, rules, professions, or orders, they or any of them were named, known, or called, which sith the said 4th day of *February*, the twenty-seventh year of the reign of our said Sovereign Lord, have been dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come to his Highness, and by the same authority, and

and in like manner shall have, hold, possede, and enjoy all the sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, parsonages appropriated, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, * commons, leets, courts, liberties, privileges, franchises, and other whatsoever hereditaments, which appertained or belonged to the said late monasteries; abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, or to any of them, in as large and ample manner and form, as the late abbots, priors, abbesses, prioresses, and other ecclesiastical governors, and governesses, of such late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places had, held, or occupied, or of right ought to have had, holden, or occupied, in the right of their said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious and ecclesiastical houses or places, at the time of the said dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or by any other manner of mean coming of the same to the King's Highness sithen the fourth day of *February* above specified.

S. 3. " And it is further enacted by the authority aforesaid, That not only all the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and † ecclesiastical houses and places, sites, circuits, pre-

All houses to be dissolved, and their lands given to the King.

* 27 H. 8. fo. 10. Bro. chose en action, 14.

† *Colt. Pl. f. 445.*

cinets, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, and all other the premises, forthwith, immediately and presently, but also all other monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and all other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come to the King's Highness, and also all the sites, circuits, precincts, manors, lordships, granges, meases, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, pensions, portions, parsonages appropriate, vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other hereditaments whatsoever they be, belonging or appertaining to the same, or any of them, whensoever, and as soon as they shall be dissolved, suppressed, renounced, relinquished, forfeited, given up, or by any other mean come unto the King's Highness †, shall be vested, deemed, and adjudged by authority of this present parliament, in the very ¶ actual and real seisin and possession of the King our Sovereign Lord, his heirs and successors for ever, in the state and condition as they now be, and as though all the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and all other religious and ecclesiastical houses, and places so dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the King's Highness, as is aforesaid, as also the said monasteries, abbathies, priories,

† *Colli.* 10. f. 53.

¶ *Plow.* fo. 193.

nunneries,

nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the King's Highness, sites, circuits, precincts, manors, lordships, granges, lands, tenements, and other the premises, whatsoever they be, and every of them were in this present act specially and particularly rehearsed, named and expressed by express words, names, titles, and faculties, and in their natures, kinds, and qualities.

The sites and lands of the monasteries shall be in the actual possession of the King.

§ 4. " And be it also enacted by the authority aforesaid, That all the said late monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, which being dissolved, suppressed, renounced, relinquished, given up, or come to the King's Highness by any manner of means as is aforesaid, and all the manors, lordships, granges, lands, tenements, and other the premises (except such thereof as be come to the King's hands by attainder or attainders of treason) and all the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses, or places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come unto the King's Highness, and all the manors, lordships, granges, lands, tenements, meadows, pastures, rents, reversions, services, woods, tithes, portions, pensions, parsonages, appropriate vicarages, churches, chapels, advowsons, nominations, patronages, annuities, rights, interests, entries, conditions, commons, leets, courts, liberties, privileges, franchises, and other hereditaments, whatsoever they be, belonging to

All abbey lands shall be within the survey at the court of augmentations, except such which come by attainder.

the same or to any of them, (except such thereof, which shall happen to come to the King's Highness by attainder or attainders of treason) shall be in the order, survey and governance of our said Sovereign Lord the King's court of augmentations of the revenues of his crown, and of the chancellors, officers, and ministers of the same. And all the farms, issues, revenues and profits coming and growing of the premises, and of every part thereof (except before except) shall be ordered, taken and received to the King's use by the said chancellor, ministers and officers of the same court, in such, and like manner and form as the monasteries, priories, sites, circuits, manors, granges, meases, lands, tenements, rents, reversions, services, tithes, pensions, portions, advowsons, patronages, rights, entries, conditions, and other hereditaments, late appertaining or belonging unto the monasteries, abbathies, priories, or other religious houses, late by authority of parliament suppressed, been ordered, surveyed and governed. Saving to all and every person and persons, and bodies politick, and their heirs and successors, and the heirs and successors of all and every of them (other than the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses of the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, and their successors, and the successor of every of them, and such as pretend to be founders, patrons, or donors of such monasteries, abbathies, priories nunneries, colleges, hospitals, houses of friers, and other ecclesiastical houses and places, or of any manors, messuages, lands, tenements, or other hereditaments belonging to the same, or to any of them, their heirs and successors,

Other means
titles saved.

cessors, and the heirs and successors of every such founder, patron, or donor, and the now abbots, priors, abbeesses, prioresses, and other ecclesiastical governors, and governesses, of such monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's Highness, and such as pretend to be founders, patrons, or donors of such monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other ecclesiastical houses, and places, or of any manors, messuages, lands, tenements, or other hereditaments to the same belonging, or to any of them, their heirs and successors, and the heirs and successors of every of them) all such * right, title, claim, interest, possession, rents, charges, annuities, leases, farms, offices, fees, liveries, and livings, portions, pensions, corrodiess, commons, synodics, priories, and other profits, which they, or any of them have, claim, ought, may, or might have had, in or to the premisses, or to any part or parcel thereof, in such like manner, form and condition, to all intents, respects, constructions, and purposes, as if this act had never been had ne made (rents, services, rents seck, and all other services and suits only except.)

Rents service,
rents, secke and
other services
and suits except-
ed out of the
saving.

S. 5. " Provided always and be it enacted by the authority abovesaid, that if any late abbot, prior, prioress, abbess, or other ecclesiastical governor or governess abovesaid, within one year next before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's

Leases or grants
made within a
year of lands not
used to be let to
term.

Highness of his late monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or * ecclesiastical house or place, hath made any lease or grant under his covent or common seal, or otherwise for term of life, or for term of years, of the site, circuit and precinct of his said late monastery, abbathy priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, or of any part thereof, or of any manors, messuages, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments, which belonged or appertained to his said late monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, which manors, messuages, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments, were not, before the same lease, commonly used to be set, nor let to farm, but kept and reserved in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality, and good house-keeping: or within one year, as is above said, hath made any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, whereof, or in the which any † estate or interest for term of life, year or years, at the time of the making of any such grant or lease, then had his being or continuance, and then was not determined, finished, or expired, or within the time of one year, as is

Leases made in reversion within one year before the dissolution.

* *Dyer*, 77. 207. 231.

† *Dyer*, 280.

above said hath made any lease or grant for term of life, or for term of years of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other * hereditaments, whatsoever they be, upon the which leases and grants, the usual and old rents and farms accustomed to be yielded and reserved by the space of twenty years next before the first day of this present parliament is and be not thereupon reserved and yielded: or if any such governor or governess hath made any bargain or sale of his woods within one year, as is afore limited, which woods be yet growing and standing, that then all and every such lease, grant, bargain, and sale of wood or woods, shall be utterly void and of none effect.

Leases made not reserving the old rent.

Wood sales within one year before the dissolution.

S.6. "And it is also enacted by the authority aforesaid, that all feoffments, fines and recoveries had, made, acknowledged or suffered by any governor or governess, without the king's licence under his great seal, within one year next before the dissolution, renouncing, relinquishing, forfeiting, giving up or coming unto the King's Highness of his said monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, or any manors, meases, lands, tenements, or other hereditaments whatsoever they be; which the said late abbot, prior, abbess, prioress, and other ecclesiastical governor and governess, or any of them, or any of their predecessors had or held of the gift, grant, or confirmation of our said Sovereign Lord, or any of his Highness's progenitors, or of the which monasteries, abbathies, prio-

Feoffments, fine and recoveries, known by abbots of lands of the King's gift, or of their ancient freedom.

* Dyer, 123.

ries, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses or places, our said Sovereign Lord was founder or patron, or which manors, meases, lands, tenements, or other hereditaments, were of the ancient or old foundation or possession of the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses or places, shall be utterly void and of none effect.

S. 7. " And it is further enacted by the authority aforesaid, that if any abbot, prior, abbeſs, prioreſs, or other ecclesiastical governor or governeſs, of any monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's Highneſs within one year next before the first day of this present parliament, have made, or hereafter do make any lease or grant under his covent or common ſeal, or otherwise for term of years, or life or lives, of the ſite, circuit, and precinct of his ſaid monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, or of any part thereof; or of any manors, messuages, lands, tenements, parsonages appropriate, tithes, pensions, portions, and other hereditaments, belonging or appertaining to his ſaid monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, which manors, meases, granges, lands, tenements, parsonages appropriate, tithes, pensions, portions, and other hereditaments, whatsoever they be, were not like the same lease commonly used to be set nor let to farm, but kept and reserved

Leases of lands not usually let of such monasteries as hereafter shall be suppressed.

reserved in the manurance, tillage, or occupation of the said governor or governess, for the maintenance of hospitality and good house-keeping, or now be in the manurance, tillage or occupation of the said governor, or governess, for the maintenance of hospitality and good house-keeping : or within one year next before the first day of this present parliament, hath made, or hereafter shall make any lease or grant for term of life, or for term of years, of any manors, meases, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, whereof and in the which any * estate or interest for term of life, year or years, at the time of the making any such grant or lease then had his being † or continuance, or hereafter shall have his being or continuance : and that was not determined, finished, or expired, or at the time of any such lease to be made shall not be determined, finished, or expired : or within one year next before the first day of this present parliament hath made, or hereafter shall make any lease or grant for term of life, or for term of years, of any manors, messuages, lands, tenements, meadows, pastures, woods, parsonages appropriate, tithes, pensions, portions, churches, chapels, or other hereditaments, whatsoever they be, upon the which leases and grants the usual and old rents and terms accustomed to be yeelden and reserved by the space of twenty years next before the said first day of this present parliament, is, or be not, or hereafter shall not be thereupon reserved and yeelden : or of any such governor or governess of any such monastery, abbath, priory, nunnery, college, hos-

Lease of lands in lease.

Leases of abbey lands, which are to be dissolved not reserving the old rent.

* Coke, l. 3. f. 76.

† Co. pl. 372.

pital,

Wood sales made,
or to be made
within one year
before the disso-
lution.

pital, house of friers, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's highness, within one year next before the first day of this present parliament, hath made, or hereafter shall make any bargain or sale of his woods, which woods be yet growing and standing, that then all and every such lease, grant, bargain and sale of wood or woods, shall be utterly void and of none effect.

S. 8. "And it is also enacted by the authority aforesaid, that all feoffments, fines and recoveries, had, made, knowledged or suffered within one year next before the first day of this present parliament: or hereafter to be had, made, knowledged or suffered by any governor, or governess of any monastery, abbathy, priory, nunnery, college, hospital, house of friers, or other religious or ecclesiastical house or place, which hereafter shall happen to be dissolved, suppressed, renounced, relinquished, forfeited, given up, or come to the King's Highness, without the King's licence under his great seal, of any manors, meases, lands, tenements, or other hereditaments, whatsoever they be, which the said abbots, priors, abbesses, prioresses, and other ecclesiastical governors, and governesses, which hereafter shall happen to be dissolved, suppressed, relinquished, forfeited, given up, or come unto the King's Highness, as is aforesaid, or any of them, or any of their predecessors had or held, or have, and hold, of the gift, grant, or confirmation of our said sovereign lord, or of any of his highnesses progenitors, or of the which monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, or other religious and ecclesiastical

Assurances made
by governors of
houses of religion
suppressed of any
of their lands
within one year
before.

ecclesiastical houses and places, our said sovereign lord is founder or patron, or which manors, meases, lands, tenements, or other hereditaments, were or be of the ancient or old foundation, or possession of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses or places, shall be utterly void and of none effect.

S. 9. " Provided alway, and be it enacted by authority aforesaid, that if any abbot, prior, abbess, or prioress, or other governor or governess above-said, within one year next before the first day of this present parliament, or if any late abbot, prior, abbess, prioress, or other late governor or governess above-said, within one year next before any such dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's Highness, of the premises, or of any parcel thereof, as is aforesaid, have made any demise, lease, or grant, to any person or persons for term of years, of any manors, meases, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other * hereditaments aforesaid, which person or persons at the time of the said demise, lease, or grant, had, and held the same to farm for term of years then not † expired, that then the said person or persons to whom any such demise, lease, or grant hath been so made, shall have, and hold the same for the term of one and twenty years only from the time of the making of the said demise, lease or grant, if so many years be by the same demise, lease, or grant, specified, limited, and expressed, or else for so many years, as in such demise, lease, or grant been

A lease for years made to the old lessee for years within a year before the dissolution, or of this parliament.

* Co. pla. 188.

† Plow. 102. Dyer 102. 352.

expressed,

expressed, so that the old rent be thereupon reserved, and so that the same lease or leases exceed not twenty-one years. This act or any thing therein contained to the contrary notwithstanding.

A lease for life made to the old lessee for life or years.

S. 10. " Provided also, and be it enacted by the authority abovesaid, that if any abbot, prior, abbess, prioress, or other late governor, or governess, within one year next before any such dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming unto the King's Highness of the premises, or of any parcel thereof as is aforesaid, have made any demise, lease, or grant to any person or persons, for term of life or lives, of any manors meases, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, which person or persons, or any of them, at the time of the said demise, lease, or grant, had and held the same for term of life or lives, or for term of years then not expired: that then the said person or persons, to whom any such lease or grant hath been so made, shall have and hold the same for term of their life or lives, so that the old rent be thereupon reserved: this act or any other thing therein contained to the contrary thereof notwithstanding.

All copies for life granted according to the custom shall be good.

S. 11. " Provided also, and be it enacted by the authority aforesaid, That all and singular leases and grants, made by copy to any person or persons, of any of the said messuages, lands, tenements, parsonages appropriate, tithes, pensions, portions, or other hereditaments aforesaid, for term of life or lives, which, by the custom of the country, hath been used to be demised, letten, or granted by copy of court-roll, shall be good and effectual in the

the law, so that the old rent be reserved by and upon every such lease and leases: this act or any thing therein contained to the contrary in any wise notwithstanding.

S. 12. " Provided alway, and be it further enacted by the authority aforesaid, That all leases heretofore made or any of the premises by authority of our Sovereign Lord the King's courts of augmentations * of the revenues of his crown, and all such leases, feoffments, and wood-sales, made by the said governor and governesses, or any of them under their covent-seals, or under the covent or common seal of any of them, within one year next before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming to the King's Highness, of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses, or places, which said leases, grants, feoffments, and wood-sales have been examined, enrolled, decreed or affirmed, in our said Sovereign Lord the King's court of augmentations, and the decree of the same put in writing, sealed with the seal of the said court of augmentations, shall be good and effectual according to the same decree: any clause or act heretofore in this present act to the contrary notwithstanding.

Leases allowed in the court of augmentations.

S. 13. " Provided alway, and be it also further enacted by the authority aforesaid, That if any person or persons have justly and truly, without fraud, or covin, paid or given in any sum or sums of money, to any the said late governor and governesses,

How they shall be relieved which have truly paid money for wood to any ecclesiastical governor.

for the bargain and sale of any woods, being and growing in or upon any manors, lands, tenements, or hereditaments, which appertained or belonged to the said late monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical places, or unto any of them, which bargain and sale, by authority of this act is made void and of none effect, and by mean thereof, the King's Highness may have and take the commodity and profit of such woods, so bargained and sold : that then the chancellor and other officers of our said Sovereign Lord the King's court of augmentations, or three of them, whereof the chancellor for the time being shall be one, of our said Sovereign Lord the King's treasure, remaining in the treasury of the same court, shall satisfy and recompence every such person or persons, such sum of money, or other recompence, as the same chancellor and officers, or three of them, whereof the said chancellor shall be one, shall think meet and convenient. And if any other person or persons, shall happen to take profit and commodity, by reason of avoiding of such wood-sales by authority of this act, that then every person and persons, which may or shall take such profit, shall be ordered for satisfaction to be made to the parties that shall happen to be grieved by this act, by the said chancellor and other the officers of the same court.

Assurance to
others by the
King's licence
of any abbey
lands.

S. 14. " Provided also, and be it further enacted by the authority aforesaid, That all and every person and persons, their heirs and assigns, which sithen the said 4th day of *February*, by licence, pardon, confirmation, release, assent, or consent of our said Sovereign Lord the King, under his great seal heretofore

heretofore given, had or made, or hereafter to be had or made, have obtained or purchased by indenture, fine, feoffment, recovery, or otherwise, of the said abbots, priors, abbesses, prioresses, or other governors or governesses of any such monasteries, abbatheies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses, or places, any monasteries, priories, colleges, hospitals, manors, lands, tenements, meadows, pastures, woods, churches, chapels, parsonages, tithes, pensions, portions, or other hereditaments, shall have and enjoy the same, according to such writings and assurances as hath been thereof before the first day of this present parliament, or hereafter shall be had or made.

§. 15. " Saving to all and every person and persons, and bodies politick, their heirs and successors, and to the heirs and successors of every of them (other than the said late abbots, abbesses, priors, prioresses, and other governors and governesses, and their successors, and the successors of every of them, and such as pretend to be founders, patrons, or donors of the monasteries, abbatheies, priories, nunneries, colleges, hospitals, and other religious or ecclesiastical houses, or places, or of any of them, or of any manors, messuages, lands, tenements, or other hereditaments late belonging to the same, or to any of them, and their heirs, successors, and the heirs and successors of every such founder, patron, or donor,) all such right, title, interest, possession, rents, annuities, commodities, offices, fees, liveries, and livings, portions, pensions, corrodiess, synodics, priories, or other

A saving of the right of others accrued unto them before the said purchase.

other profits, which they or any of them have, ought or might have had, in or to any of the said monasteries, abbathies, priories, colleges, hospitals, manors, lands, tenements, rents, services, reversions, tithes, pensions, portions, or other hereditaments, at any time before any such purchase, indentures, fines, feoffments, recoveries, or other lawful mean between any such parties had or made, as is above-said: this act or any thing therein contained to the contrary notwithstanding.

A confirmation
of the King's
purchase made
since 4 Fe-
bruary, Anno
27 H. 2.

S. 16. "And where our said Sovereign Lord, with the fourth day of *February*, the said twenty-seventh year of the reign of our said Sovereign Lord, hath obtained and purchased, as well by exchanges, as by gifts, bargains, fines, feoffments, recoveries, deeds enrolled, and otherwise, of divers and sundry persons, many and divers honours, castles, manors, lands, tenements, meadows, pastures, woods, rents, reversions, services, and other hereditaments, and hath not only paid divers and sundry great sums of money for the same, but also hath given and granted for the same, unto divers and sundry persons, divers and sundry manors, lands, tenements, and hereditaments, and other recompences in and for full satisfaction of all such honours, castles, manors, lands, tenements, rents, reversions, services, and other his hereditaments, by his Highness obtained or had as is above-said. Be it therefore enacted by the authority above-said, that our said Sovereign Lord the King, his heirs and successors, shall have, hold, possess and enjoy all such honours, castles, manors, lands, tenements, and other hereditaments, as his Highness with the said fourth day of *February*, the twenty-seventh year above-said, hath obtained and had by way of exchange, bargain,

purchase,

purchase, or other whatsoever mean or means, according to the true meaning and intent of his Highness bargain, exchange or purchase, misrecital, misnaming, or non-recital, or not naming of the said honours, castles, manors, lands, tenements, and other hereditaments, comprised or mentioned in the bargains, or writings, made between the King's Highness, and any other party or parties, or of the towns or countries, where the said honours, castles, manors, lands, tenements, and hereditaments lie and been, any other matter or cause whatsoever it be in any wise notwithstanding.

17. " Saving to all and every person and persons, and to their heirs, bodies politick and corporate, and to their successors, and to every of them (other than such person and persons, and their heirs, and their wives, and the wives of every of them, bodies politick and corporate, and their successors, and every of them, of whom the King's Highness hath obtained, by exchange, gift, bargain, fine, feoffment, recovery, deed enrolled, or otherwise, any such honours, castles, manors, lands, tenements, and other hereditaments, as is aforesaid) all such right, title, use, interest, possession, rents, charges, annuities, commodities, fees, and other profits, (rents services, and rents seck, only except) which they or any of them have, might, or ought to have had, in or to the premises, so obtained and had, or in or to any parcel thereof, if this act had never been had nor made: this present act or any thing therein contained to the contrary notwithstanding.

A saving of the right of all others, but of the sellers, their heirs and wives.

An exception of rents services, and rents seck.

18. " And where it hath pleased the King's Highness of his most abundant grace and goodness,

ACTS of PARLIAMENT.

as well upon divers and sundry considerations his Majesty specially moving, as also otherwise to have bargained, sold, charged or given and granted by his Grace's several letters patents, indentures or other writings, as well under his Highness's great seal, as under the seal of his Highness's Duchy of Lancaster and the seal of the office of the augmentations of his crown, unto divers and sundry of his loving and obedient subjects, divers and sundry honours, castles, manors, monasteries, abbathies, priories, lands, tenements, rents, reversions, services, parsonages appropriate, advowsons, liberties, tithes, oblations, portions, pensions, franchises, privileges, liberties, and other hereditaments, commodities and profits, in fee-simple, fee-tail, for term of life, or for term of years: for avoiding of which said letters patents, and of the contents of the same, divers, sundry, and many ambiguities, doubts and questions might hereafter arise, be moved and stirred, as well for mis-recital, or non-recital, as for divers other matters, things or causes to be alledged, objected or invented against the said letters patents, as also for lack of finding of offices or inquisitions, whereby the title of his Highness therein ought to have been found, before the making of the same letters patents, or for mis-recital, or non-recital of leases, as well of record as not of record, or for lack of the certainty of the values, or by reason of mis-naming of the honours, castles, manors, monasteries, abbathies, priories, lands, tenements, and other hereditaments, comprised and mentioned within the same letters patents, or of the towns and counties where the same honours, castles, manors, monasteries, abbathies, priories, lands, tenements, rents, and other hereditaments lie and been, as for divers and sundry other suggestions and surmise which

which hereafter might happen to be moved, furnished and procured against the same letters patents, albeit the words in effect contained in the said letters patents be according to the true intent and meaning of his most royal Majesty.

S. 19. " Be it therefore enacted by the authority of this present parliament, That as well all and every the said letters patents, indentures, or other writings, and every of them, under the seal or seals abovesaid, or of any of them, made or granted by the King's Highness sithen the said 4th day of February, the said twenty-seventh year of his most noble reign, as all and singular other his Grace's letters patents, indentures, or other writings to be had, made, or granted to any person or persons within three years next after the making of this present act, of any honours, castles, manors, monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses or places, sites, circuits, precincts, lands, tenements, parsonages, tithes, pensions, portions, advowsons, nominations, and all other hereditaments and possessions, of what kind, nature or quality soever they be, or by whatsoever name or names they or any of them be named, known or reputed, shall stand and be good, effectual and available in the law of this realm, to all respects, purposes, constructions and intents, against his Majesty, his heirs and successors, without any other licence, dispensation or tolerance of the King's Highness, his heirs and successors, or of any other person or persons whatsoever they be, for any thing or things contained, or hereafter to be contained in in any such letters patents, indentures, or other writ-

The King's patents sufficient notwithstanding mis-recital, not finding of offices, &c.

Stat. 34 & 35 Hen. VIII, chap. 21.

ACTS of PARLIAMENT.

ings : any cause, consideration, or thing material to the contrary in any wise notwithstanding.

A saving of the right of others in the lands assured by the King.

S. 20. " Saving to all and singular persons, bodies politick and corporate, their heirs and successors, and the heirs and successors of every of them (other than his Highness, his heirs and successors, and the said governors and governesses, and their successors, donors, founders, and patron aforementioned, and their heirs and successors, and all other persons claiming in their rights, or to their use, or in the right or to the use of any of them) all such right, title, claim, interest, possession, reversion, remainder, offices, annuities, rent, charges and commons, which they or any of them have, ought, or might have had, in or to any of the said honours, castles, manors, monasteries, abbaties, priories, lands, tenements, and other hereditaments in the said letters patents made, or hereafter to be made, comprised at any time before the making of the said such letters patents ; this act or any thing therein contained to the contrary notwithstanding.

S. 21. " And where divers and sundry abbots, priors, abbeesses, prioresses, and other ecclesiastical governors and governesses of the said late monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, have had, possessed and enjoyed divers and sundry parsonages appropriated, tithes, pensions, and portions, and also were acquitted and discharged of and for the payment or payments of tithes, to be paid out or for their said monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, manors, messuages, lands, tenements,

nements and hereditaments. Be it therefore enacted by the authority aforesaid, that as well the King our Sovereign Lord, his heirs and successors, as all and every such person and persons, their heirs and assigns, which have, or hereafter shall have any monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other ecclesiastical houses or places, sites, circuits, precincts of the same, or any of them, or any manors, messuages, * parsonages appropriate, tithes, pensions, portions, or other hereditaments, whatsoever they be, which belonged or appertained, or which now belong or appertain unto the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious and ecclesiastical houses or places, or unto any of them, shall have, hold, retain, keep and enjoy, as well the said parsonages appropriate, tithes, pensions and portions of the said monasteries, abbathies, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, sites, circuits, precincts, manors, meases, lands, tenements, and other hereditaments whatsoever they be, and every of them, according to their estates and titles, † discharged and acquitted of payment of tithes, as freely, and in as large and ample manner, as the said late abbots, priors, abbesses, prioresses, and other ecclesiastical governors and governesses, or any of them had, held, occupied, possessed, used, retained or enjoyed the same, or any parcel thereof at the days of their dissolution, suppression, renouncing, relinquishing, forfeiting, giving up or coming to the King's Highness of such monasteries, ab-

Such abbey lands as before the dissolution of them were discharged of tithes, shall so continue.

* Dyer fol. 277, 349. Coke, II. 2. fol. 46. lib. 11. fol. 8. 15.

† Coke pla. fol. 451. 454.

bathies, priories, nunneries, colleges, hospitals, houses of friers, or other religious or ecclesiastical houses or places, or at the day of the dissolution, suppression, renouncing, relinquishing, giving up, or coming to the King's Highness of any of them : this act or any thing therein contained to the contrary notwithstanding.

All rents, services, and other duties reserved to the King.

S. 22. " Saving to the King's Highness, his heirs and successors, all and all manner of rents, services, and other duties whatsoever they be, as if this act had never been had nor made.

Monasteries, &c. exempt from visitations and jurisdictions of the ordinary.

S. 23. " And be it further enacted by authority of this present parliament, that such of the said late monasteries, abbaties, priories, nunneries, colleges, hospitals, houses of friers, and other religious and ecclesiastical houses and places, and all churches and chapels to them or any of them belonging, which before the dissolution, suppression, renouncing, relinquishing, forfeiting, giving up, or coming unto the King's Highness, were exempted from the visitation or visitations, and all other jurisdiction of the ordinary or ordinaries, within whose dioceses they were situate or set, shall from henceforth be within the jurisdiction and visitation of the ordinary or ordinaries, within whose dioceses they or any of them be situate and set, or within the jurisdiction and visitation of such person or persons, as by the King's Highness shall be limited or appointed : this act, or any other exemption, liberty, or jurisdiction to the contrary notwithstanding.

S. 24. " And where before this time it hath pleased the King's Majesty, at the contemplation and humble petition of the right Noble *Thomas Duke* of
of

of *Norfolk*, to give his royal assent of licence by his Grace's word, without any manner of letters patents, or other writing, to purchase and receive to him and his heirs for ever, of *William Flatbury*, late abbot of the monastery of *Sipton*, in the county of *Suffolk*, and convent of the same late monastery now being dissolved, all the same monastery, together with all and singular manors, lordships, lands, tenements, woods, waters, commons, courts, leets, advowsons, patronages, parsonages, vicarages, chantries, free chapels, tithes, portions of tithes, pensions, annuities, rents, suits, services, reversions, remainders, and all other things which were the hereditaments, or the possessions of the said late monastery, where-soever they lay, or were within the realm of *England*. And in like wise our said Sovereign Lord gave like licence, by his Grace's word, unto the Right Honourable *George Lord Cobham*, to purchase and receive to him and to his heirs for ever, of the late master and brethren of the college or chantry of *Cobham*, in the county of *Kent*, now being utterly dissolved, the site of the same college or chantry, and all and singular their hereditaments and possessions; as well temporal as ecclesiastical, where-soever they lay, or were within the realm of *England*.

Duke of *Norfolk*,
Sipton abbey.

Lord *Cobham*,
Cobham chantry.

S. 25. "Be it therefore enacted by the authority of this present parliament, that the act above written, or any thing therein contained, shall not be in anywise prejudicial or hurtful to the said Duke and Lord *Cobham*, or to either of them, or to the heirs or assigns of either of them, but that the same Duke and Lord *Cobham*, and either of them sundrily, and the heirs and assigns of either of them, shall and may have, hold, receive and enjoy the premises by them sundrily purchased or received, according to the

purports and effects of such evidences, writings and conveyances, as they or any of them sundrily have caused to be devised and made to them or to their uses for the same.

Saving of other
mens rights in
the monastery of
Sipton, and *Cob-*
ham chantry.

S. 26. " Saving alway, and reserving to all and singular persons, and bodies politic, and to their heirs and successors, (other than the said late abbot and convent, and their successors, and the said late master and brethren, and their successors, and the founders of the same monastery, or of the said college or chantry, and the heirs of either of them, and all donors, grantors, or augmenters of them, or of either of them, and the heirs and assigns of either of them) all such rights, titles, possessions, rents, services, fees, offices, annuities, corrodiés, liberties, leases, and all other such their interests, profits, and commodities, as they or any of them had, should, or ought to have, of, to, or in any of the premises, sundrily purchased or received by the said Duke or Lord *Cobham*, if this present act had never been had or made : any thing in the same act to the contrary being in any wise notwithstanding."

By this act no houses were suppressed, but all the surrenders, which either were made, or should be made, were confirmed ; the mitred or parliamentary abbies were all in being, and most of the abbats present at the passing of it ; and yet none of them either opposed or voted against it, but were every one shortly brought to surrender, except the abbats of *Colchester*, *Glástonbury*, and *Reading*, who were therefore accused of high treason, attainted, and executed ; and their abbies were seized or forfeited to the King by their attainder. 2 *Burn's Eccles. Law*, 480.

See stat. 34 Hen. VIII. chap. 19. *Gibbs. Cod. Jar.*

Eccles. Angl. 977.

Wilson and Redman, Mich. 12 Car. II. ante p. 28.

Hankings

Hanking and Gay, Hil. 5 Geo. I. ante, p. 145.

Goole and Jordan, Hil. 11 Geo. I. ante, p. 199.

Hanson and Fielding, Easter, 13 Geo. I. ante, p. 231.

Benson and Olive, Trinity, 3 & 4 Geo. II. ante, p. 319.

Leigh and Maudsley, Hil. 4 Geo. II. ante, p. 322.

Corporation of Burn and Evans, Easter, 12 Geo. II. ante, p. 364.

By reason of which discharge from tithes of lands, which were given to the King by this act, and which were discharged in the hands of the religious, it hath been more strictly inquired, what were the houses dissolved by this act, than by any other of the acts of dissolution; and therefore the names of such houses, &c. are here inserted in the following catalogue;

Catalogue of monasteries of the yearly value of 200 *l.* or upwards, dissolved by the statute of 31 *H. 8.* and by that means capable of being discharged of tithes: in which are the following abbreviations:

Ab. abbey; Pr. priory; C. Aust. Canons of St. * Austin; Bl. M. Black † Monks; Wh. C. White † Canons; Ben. † Benedictines; Gilb. † Gilbertines; Præm. † Præmonstratenses; Carth. † Carthusians; Mon. † Monks; Clun. † Cluniacs; Cist. † Cistercians; T. in the Time of; ab. about the year.

B E R K S H I R E.

MONASTERIES.	ORDER.	FOUNDED.	VALU ² .		
			£.	s.	d.
Reading.	Ben. —	T. Hen. 1.	1938	14	3
Busleham ab.	C. Aust.	13 Ed. 3.	285	0	10
Abington ab.	Ben. —	720 —	1876	10	9

B E D F O R D S H I R E.

Newham pr.	C. Aust.	T. Hen. 1.	293	15	11
Elmiston ab.	Ben. —	T. W. Conq.	285	12	10

* See 2 *Burn's Eccles. Law*, 462, 463.
 † See *Id.* 461.

‡ See *Id.* 463.

§ See *Id.* 460.

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MONASTERIES. ORDER. FOUNDED. VALUE.

Wardon ab.	Cist. —	1139. —	389 16 6
Chickfont pr.	Wh. C. Gilb.	T. W. Rufus.	212 3 5
Dunstable ab.	C. Aust.	T. Hen. 1.	344 13 3
Woburn ab.	Cist. —	T. John.	391 18 2

BUCKINGHAMSHIRE.

Aylmington coll.	C. Aust.	T. Edw. 1.	416 16 4
Noteley ab.	C. Aust.	1112. —	437 6 8
Miffenden ab.	Ben. —	1293 —	261 14 6

CAMBRIDGESHIRE.

Thorney ab.	Ben. —	972. —	411 12 11
Barewell pr.	C. Aust.	1092. —	256 11 10

CHESHIRE.

St. Werburge ab.	Ben. —	1059 —	1093 5 11
Combermeor ab.	Cist. —	1134. —	225 9 7

CORNWALL.

Bodmin pr.	C. Aust.	936. —	270 0 11
Launceston ab.	C. Aust.	T. W. Cong.	354 0 11
St. Germain's ab.	C. Aust.	T. Ethelstan.	243 8 0

CUMBERLAND.

Carlisle pr.	C. Aust.	T. W. Rufus.	418 3 4
Holme Coltrone ab.	Cist. —	1135. —	427 19 3

DERBYSHIRE.

Darby ab.	C. Aust.	T. H. 2.	258 14 5
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DEVONSHIRE.

Ford ab.	Cist. —	1133. —	374 10 6
Newnham ab.	Cist. —	ab. 1246.	227 7 8
Dinkefwell ab.	Cist. —	1201. —	294 18 6
Hertland ab.	C. Aust.	T. H. 2.	306 3 2
Torre ab.	Præm.	T. Ric. 1.	396 0 11
Buckfast ab.	Cist. —	T. H. 2.	466 11 2

Plimpton

Henry the Eighth.

1534

MONASTERIES.	ORDER.	FOUNDED.	VALUE.
			£. s. d.
Plimpton ab.	Cist. —	T. Edw. 1. . .	241 17 9
Tavistock ab.	Ben. —	961. —	902 5 7
Exon pr.	Clun. —	T. Hen. 1.	502 12 9

D O R S E T S H I R E.

Abbotbury.	Ben. —	ab. 1016.	390 19 7
Middleton ab.	Ben. —	T. Ethelstan.	538 13 12
Tarrant ab.	Cist. —	By Henry 3.	214 7 9
Shafton ab.	Ben. —	941. —	1166 8 9
Cerne ab.	Ben. —	T. Edgar.	515 17 16
Sherburn ab.	Ben. —	ab. 370. —	682 14 7

D U R H A M.

S. Cuthbert ab.	Ben. —	ab. 842.	1366 10 9
Tinmouth pr.	Ben. —	— — —	397 11 5

E S S E X.

Berking ab.	Ben. —	680. —	862 12 5
Stratford Langthorn ab.	Cist. —	1135. —	511 16 3
Waltham ab.	C. Aust.	ab. 1060.	900 4 3
Walden ab.	Ben. —	1136. —	372 18 2
St. Oswith ab.	C. Aust.	1120. —	677 1 2
Colchester ab.	C. Aust.	T. Hen. 1.	523 17 0

G L O U C E S T E R S H I R E.

Bristol ab.	C. Aust.	T. Hen. 1.	670 13 11
Hayles ab.	Cist. —	1246. —	357 7 8
Winchomb ab.	Ben. —	787. —	759 11 9
Tewkesbury ab.	Ben. —	715. —	1598 1 5
Cirencester ab.	C. Aust.	T. Hen. 1.	1051 9 1
King's-wood ab.	Cist. —	1139. —	244 11 2
Gloucester ab.	Ben. —	680. —	1946 5 9
Lanthony pr.	C. Aust.	1136.	641 19 11

HAMP.

1212 ACTS of PARLIAMENT.

H A M P S H I R E.

MONASTERIES.	ORDERS.	FOUNDED.	VALUE.
			£. s. d.
St. Swithin's } Winton ab. }	Ben. —	634. —	1507 17 2
Hyde ab.	Ben. —	by Alfred.	865 18 0
Wherwell ab.	Ben. —	by Edgar.	339 8 7
Romsey mon.	Ben. —	907. —	393 10 10
Twinham pr.	C. Aust.	before 1042.	312 7 0
Belloloco ab.	Cist. —	1024. —	326 13 2
Southwick pr.	C. Aust.	T. H. 1.	257 4 4
Titchfield ab.	Præm.	T. H. 3.	249 16 1

H E R T F O R D S H I R E.

St. Alban's ab.	Ben. —	755 —	2102 7 1
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H U N T I N D O N S H I R E.

St Neots ab.	Ben. —	ab. T. Hen.	241 11 4
Ramsay ab.	Ben. —	969. —	1716 12 4

K E N T.

St. Austin's Cant.	Ben. —	605. —	1413 4 11
Leds pr.	C. Aust.	1119. —	362 7 7
Faversham ab.	Clun. —	1147. —	286 12 6
Boxley ab.	Cist. —	1147. —	204 4 11
Roffen ab.	Ben. —	600. —	486 11 5
Mallin ab.	Ben. —	by Edmund.	218 4 2
Dartford ab.	C. Aust.	1372. —	380 0 0

L A N C A S H I R E.

Whalley ab.	Cist. —	1172. —	321 9 1
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L E I C E S T E R S H I R E.

Leicester ab.	C. Aust. —	1143. —	951 14 5
Croxdon ab.	Præm. —	ab. R. 1.	385 0 10
Launda ab.	C. Aust. —	T. W. Rufus.	399 3 3

L I N C O L N.

L I N C O L N S H I R E.

MONASTERIES.	ORDER.	FOUNDED.	£.	s.	d.
Lincoln St. Cath. pr.	Gilb. —	T. Hen. 2.	202	5	0
Kirkstede ab.	Cist. —	1139. —	286	2	7
Revesly ab.	Cist. —	1142. —	287	2	4
Thorton ab.	C. Aust. —	1139. —	594	17	10
Barney ab.	Ben. —	712. —	366	6	1
Croyland ab.	Ben. —	716. —	1803	15	10
Spalding ab.	Ben. —	1052 —	761	8	11
Sempringham ab.	Gilb. —	1148. —	317	4	1
Epworth mon.	Carth. —	1386. —	237	15	2

L O N D O N A N D M I D D L E S E X.

St. John Jerusa- lem pr.	} —	1000. —	2385	12	8
St. Barth. Smithfield	C. Aust.	1102. —	653	15	0
St. Mary Bishops- gate pr.	} —	1187. —	478	6	6
Clerkenwell pr.	Ben. —	T. Stephen.	262	19	0
London minors.	Ben. —	T. Edw. 1.	318	8	5
Westminster ab.	Ben. —	T. Edgar.	3471	0	2
Sion ab.	C. Aust. —	By Hen. 5.	1731	8	4
London house of	Carth. —	T. Ed. 3.	642	0	4
St. Clare without Aldgate mon.	} —	1292. —	418	8	5
St. Mary charter- house.	} Carth. —	1379. —	736	2	7
St. John Holiwell.	Bl. M.	1318 —	347	1	3
St. Mary East- Smithfield, ab.	} Cist. —	1360. —	602	11	10

N O R F O L K.

Thetford ab.	Clun. —	1103. —	312	14	4
Wymundham ab.	Ben. —	1139. —	211	16	6
Hulmo ab.	Ben. —	By Camte.	583	17	0

Westderham

MONASTERIES.	ORDER.	FOUNDED.	VALUE.		
			£.	s.	d.
Westderham ab.	Præm.	T. Hen. 2.	228	0	0
Walsingham ab.	C. Aust.	ab. T. Stephen.	391	11	6
Castle acre ab.	Clun.	1090. —	306	11	4
West acre ab.	Clun.	T. W. Rufus.	260	13	7

NORTHAMPTONSHIRE.

Burg. S. Peter ab.	Ben.	—	{ by Roscrek. of Mascia. }	1721	14	0
Pipewell ab.	Cist.	—	1143. —	286	11	8
St. Andrew's pr.	Clun.	—	1067. —	263	7	1
Sulby ab.	Præm.	—	T. Stephen.	258	8	5

NOTTINGHAMSHIRE.

Lenton pr.	Clun.	—	T. Hen. 1.	329	5	10
Thuragarton pr.	C. Aust.	—	T. Hen. 1.	259	9	4
Welbeck ab.	C. Aust.	—	T. Stephen.	249	6	3
Warfop pr.	C. Aust.	—	—	239	10	5
Bella Valla pr.	Carth.	—	ab. 16 Ed. 3.	227	8	0
Newstead pr.	C. Aust.	—	T. Ed. 3.	219	18	8

The two last are under value in Dugdale, but thus by Speed.

NORTHUMBERLAND.

Tingmouth, a cell to St Alban's, a nunnery,	511	4	1
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OXFORDSHIRE.

Godstow ab.	Ben.	—	T. Stephen.	274	5	10
Eynesham ab.	Ben.	—	by Ethelred.	441	12	2
Osney ab.	C. Aust.	—	T. Hen. 1.	654	10	2
Thame ab.	Cist.	—	T. Hen. 1.	256	13	11
Oxford pr.	—	—	before Conq.	224	4	8
Dorchester ab.	C. Aust.	—	635. —	219	12	0

SHROPSHIRE.

Haggonnd ab.	C. Aust.	—	1100. —	259	13	7
Lillethul ab.	C. Aust.	—	{ by Elſeda k. of Mercia. }	229	3	1

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MONASTERIES.	ORDER.	FOUNDED.	VALUE.
			£. s. d.
Wigmore ab.	C. Aust.	1172. —	267 2 10
Wenlock pr.	Clun. —	1181. or before.	401 0 7
Salop ab.	C. Aust.	1081. —	615 4 3
Hales Owen ab.	Præm.	T. John.	337 15 6

S O M E R S E T S H I R E.

Glaffenbury ab.	Ben. —	about 300.	331 7 4
Brewton ab.	C. Aust. —	ab. T. Conq.	439 6 8
Henton pr.	Carth. —	T. Hen. 3.	248 19 2
Witham pr.	Carth. —	by Hen. 2.	215 15 0
Taunton pr.	C. Aust.	T. Hen. 1.	286 8 10
Bath pr.	Ben. —	T. Hen. 3.	617 2 3
Keynesham ab.	C. Aust.	T. Hen. 1.	419 14 3
Michelney ab.	Ben. —	740. —	447 4 11
Backland pr.	Cist. —	T. Edw. 1.	223 7 4

S T A F F O R D S H I R E.

Deia Cres ab.	Cist. —	1153. —	227 5 0
Burton upon Trent.	Ben. —	T. Eadred.	267 14 3
Croxden ab.	Cist. —	— — —	— — —

S U F F O L K.

St. Edmundsbury ab.	Ben. —	1020. —	1659 13 11
Budley ab.	C. Aust.	1171. —	318 17 2
Sibeton ab.	Cist. —	1150. —	250 15 7
Ixworth pr.	C. Aust.	T. W. Conq.	280 9 5

S U R R E Y.

Merton pr.	C. Aust.	1414. —	957 19 5
Shene pr.	Carth. —	1414. —	777 12 0
Chertsey ab.	Ben. —	666. —	659 15 8
Newark pr.	— — —	— — —	258 11 11
St. Maryovers ab.	C. Aust.	1106. —	625 6 6
Bermundsey ab.	C. Aust.	1106. —	474 14 4

S U S S E X

S U S S E X.

MONASTERIES.	ORDER.	FOUNDED.	VALUE.
			£. s. d.
Lewes ab.	Clun. —	T. W. Ruf.	920 4 6
Roberts bridge ab.	Clift. —	T. Hen. 2.	248 10 6
Bataille ab.	Bl. M.	1066. —	987 0 11

W A R W I C K S H I R E.

Combe ab.	Cift. —	T. Steph.	311 15 1
Kenelworth ab.	C. Aust.	T. Hen. 1.	538 19 0
Meryval ab.	Cift. —	1148. —	254 1 8
Nuneaton mon.	Ben. —	T. Hen. 2.	253 14 5

W I L T S H I R E.

Malmesbury ab.	Ben. —	ab. 670.	803 17 7
Bradenstock pr.	C. Aust.	T. W. Conq.	212 19 3
Edington pr.	C. Aust.	1352. —	442 19 7
Ambresbury ab.	Ben. —	1177. —	494 15 2
Wilton ab.	Ben. —	T. Ethelwolf.	601 1 1
Fairly, a cell to } Lewis.	Clun. —	1125. —	217 0 4
Laycock ab.	C. Aust.	1232. —	203 12 3

W O R C E S T E R S H I R E.

Melverne ab.	Ben. —	1083. —	308 1 9
Evesham ab.	Ben. —	T. Offa.	1183 12 3
Perthore ab.	Cift. —	—	643 4 5
Hales Owen ab.	Præm.	T. John.	282 13 4
Bordesly ab.	Cift. —	1138. —	388 1 1

Y O R K S H I R E.

St. Mary York ab.	Ben. —	1088. —	1550 7 0
Selby ab.	Ben. —	T. W. Conq.	720 12 10
Kirkstall ab.	Cift. —	1147. —	329 2 11
De Rupe ab.	Cift. —	1147. —	224 2 5
Monks Burton ab.	Clun. —	ab. 1186.	239 3 6

Nottel

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MONASTERIES	ORDERS.	FOUNDED.	VALUE.		
			£.	s.	d.
Nostel ab.	C. Aust.	T. Hen. 1.	492	18	2
Pomfrait ab.	Clun.	T. W. Conq.	237	14	8
Gisbourn ab.	C. Aust.	T. Stephen.	628	3	4
Whitby ab.	Ben. —	T. W. Conq.	437	2	9
Montegratia ab.	Carth.	ab. 1396.	323	2	10
Newburge pr.	C. Aust.	1145. —	367	8	3
Belland ab.	Cist. —	1134. —	238	9	4
Kirkham ab.	C. Aust.	T. Hen. 1.	269	5	9
Melfa ab.	Cist. —	1136. —	299	6	4
Brillington.	C. Aust.	T. Hen. 1.	547	6	11
Walton ab.	Gilb. —	T. Stephen.	360	16	10
Bolton in Cra- ven pr.	} C. Aust.	T. Hen. 1.	212	3	4
Rival ab.		1132 —	278	10	2
Jerval ab.	Cist. —	T. Stephen.	234	18	5
Furnes ab.	Cist. —	1127. —	805	16	5
De Fontibus:	Cist. —	1132. —	998	6	8
Warter pr.	C. Aust.	T. Hen. 1.	221	3	10
Richal.	— —	— —	351	14	6
Old Maulton ab.	— —	T. Stephen.	257	7	0
St. Michael near Hull.	} Carth.	1377. —	231	17	3

IN W A L E S.

Valle de Sancta Cruce in Den- beighshire.	} Cist. —	T. Edw. 1.	214	3	5
Strata Florida, in Cardigan- shire.		T. W. Conq.	1226	6	0

See *Godolph. Repert, Canon.* 383. *Bok. Law of Tithes*, 241.
248. 250. 282, 283. *Gibf. Cod. Jur. Eccles. Angl.* 673.
3 *Burn's Eccles. Law*, 391, 392. *Archbishop of York and*
Sir Miles Stapleton, Hilary, 13 *Geo. II. ante*, p. 387. *Fen*
and Bardwell, Easter, 8 *Geo. II. ante*, p. 291.

32 HEN. VIII. CHAP. 7.

How Tithes ought to be paid, and how to be recovered being not paid.

What hath encouraged divers persons to detain their tithes from laymen which have estates in them.

Señ. 1. “**W**HERE divers and many persons inhabiting in sundry counties, and places of this realm, and other the King’s dominions, not regarding their duties to Almighty God, and to the King our Sovereign Lord, but in few years past more contemptuously and commonly presuming to offend and infringe the good and wholesome laws of this realm, and gracious commandments of our Sovereign Lord, than in times past hath been seen or known, have not letted to substract and withdraw the lawful and accustomed tithes of corns, hay, pasturages, and other sort of tithes and oblations commonly due to the owners, proprietaries, and possessors of the parsonages, vicarages, and other ecclesiastical places, of and within the said realm and dominions, being the more encouraged thereto, for that divers of the King’s subjects being lay persons, having parsonages, vicarages, and tithes to them and to their heirs, or to them and to their heirs of their bodies lawfully begotten, or for term of life or years, cannot, by the order and course of the ecclesiastical laws of this realm, sue in any ecclesiastical court for the wrongful withholding and detaining of the said tithes or other duties, nor cannot, by the order of the common laws of this realm, have any due remedy against any person or persons, their heirs or assigns, that wrongfully detaineth, or withholdeth the same; by occasion whereof much controversy, suit, variance and discord is like to insurge and ensue among the King’s subjects,

subjects, to the great detriment, damage, and decay of many of them, if convenient and speedy remedy therefore be not had and provided.

S. 2. " Wherefore it is ordained and enacted by our said Sovereign Lord the King, with the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by authority of the same, that all and singular persons of this his said realm, or other his dominions, of what estate, degree or condition soever he or they be, shall fully, truly, and effectually divide, set out, yield, or pay, all and singular tithes, and offerings afore-said, according to the lawful customs and usages of the parishes and places, where such tithes or duties shall grow, arise, come or be due. And in case that shall happen, any person or persons of his or their ungodly and perverse will and mind, to detain or withhold any of the said tithes or offerings, or part or parcel thereof, then the person or party being ecclesiastical, or lay person, having cause to demand or have the said tithes or offerings, being thereby wronged or grieved, shall and may convent the person or persons so offending before the ordinary, his commissary, or other competent minister, or lawful judge of the place where such wrong shall be done, according to the ecclesiastical laws. And in every such case of matter or suit, the same ordinary, commissary, or other competent minister, or lawful judge, having the parties or their lawful procurators before him or them, shall and may by virtue of this act proceed to the examination, hearing and determination of every such cause or matter ordinarily, or summarily, according to the course and process of the said ecclesiastical laws, and thereupon may give sentence accordingly.

Every person shall set out and pay his tithes according to the custom of the parish where they be due.

The offender convented before the ordinary.

The appellant shall pay costs of suit to the other party.

S. 3. " And in case that any of the parties, for any cause or matter concerning that suit, do appeal from the sentence, order and definitive judgment of the said ordinary, or other competent judge, as is aforesaid, then the same judge, by virtue of this act, forthwith upon such application made, shall adjudge to the other party the reasonable costs of his suit therein before expended, and shall compel the same party appellant to satisfy and pay the same costs so adjudged, by compulsory process and censures of the said laws ecclesiastical, taking surety of the other party to whom such costs shall be adjudged and paid, to restore the same costs to the appellant, if after the principal cause of that suit of appeal shall be adjudged against the same party, to whom the said costs shall be yielded. And so every ordinary or other competent judge ecclesiastical, by virtue of this act, shall adjudge costs to the other party, upon every appeal to be made in any suit, or cause of substruction, or detention of any tithes or offerings, or in any other suit to be made for or concerning the duty of such tithes or offerings.

The offender shall be bound by two justices of peace to obey the ordinary's sentence. Stat. 27 Hen. VIII. chap. 20.

S. 4. " And further be it enacted by the authority aforesaid, that if any person or persons, after such sentence definitive given against them, obstinately and wilfully refuse for to pay their tithes, or such sums of money so adjudged, wherein they be condemned for the same, that then two justices of the peace for the same shire, whereof one to be of the *quorum*, shall have authority by this act, upon information, certificate, or complaint to them made by writing by the said ecclesiastical judge that gave the same sentence, to cause the same party so refusing to be attached, and committed to the next gaol, and there to remain without bail or mainprise, till he or they shall

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shall have found sufficient sureties, to be bound by recognizance or otherwise, before the same justices, to the use of our Sovereign Lord the King, to perform the said definitive sentence and judgment.

S. 5. " Provided always, and be it enacted by the authority aforesaid, that no person or persons shall be sued, or otherwise compelled to yield, give or pay any manner of tithes, for any manors, lands, tenements, or other hereditaments, which by laws or statutes of this realm are * discharged, or not chargeable with the payment of any such tithes.

Lands discharged of tithes. *Coke pla. fo. 454.*

S. 6. " Provided also, and be it enacted by authority aforesaid, that this act, nor any thing therein contained, shall in any wise bind the inhabitants of the city of *London*, and suburbs of the same, for to pay their tithes and offerings within the same city and suburbs, otherwise than they ought, or should have done before the making of this act: any thing in this act contained to the contrary notwithstanding.

The inhabitants of *London*.

S. 7. " And be it further enacted by the authority aforesaid, that all cases where any person or persons, which now have, or which hereafter shall have any estate of inheritance, freehold, term, right or interest, of, in or to any parsonage, vicarage, portion, pension, tithes, oblations, or other ecclesiastical or spiritual profit, which now be, or which hereafter shall be made temporal, or admitted to be, abide, and go to, or in temporal hands and lay uses and profits by the law or statutes of this realm, shall hereafter fortune to be disseised, deforced, wronged, or otherwise kept or put from their lawful inherit-

Recoveries may be had and conveyances made in temporal courts of tithes as of lands.

ACTS of PARLIAMENT.

ance, estate, seisin, possession, occupation, term, right, or interest of, in, or to the same, or of, in, or to any parcel thereof, by any other person or persons, claiming or pretending to have interest or title in or to the same: that then, in all and every such case or cases, the person or persons so disseised, deforced or wrongfully kept or put from his or their right or possession, as is afore rehearsed, their heirs, wives, and such other to whom such injury and wrong shall be done or committed, shall and may have their remedy in the * King's temporal courts, or other temporal courts, as the case shall require for the recovery, getting, or obtaining of such inheritance, estate, freehold, seisin, possession, term, right, or interest, by † writs original of *prec. quod reddat*, ass. of *novel disseisin*, *mortdanc*. *Quod si deforciat*, writs of dower, or other writs original, as the case shall require, to be devised and granted in the King's court of *Chancery*, of every such parsonage, vicarage, portion, pension, or other profit called ecclesiastical or spiritual, so to be demanded according to the nature and cause of the suit thereof, in like manner and form as they should, ought, or might have had, of or for lands, tenements, or other hereditaments, in such manner to be demanded. And that writs of ‡ covenant and other writs for fines to be levied, and all other assurances to be had, made, or conveyed of any such parsonage, vicarage, portion, pension, or other profit called ecclesiastical or spiritual, as is aforesaid, shall be hereafter devised and granted in the said *Chancery*, according as hath been used for fines to be levied, and assurance to be had or made, or conveyed, of lands, tenements, or other heredi-

Judgments given
and fines levied
in the R. courts
of tithes, shall
be of like force
as of lands.

* Dyer fo. 83. Co. Inst. 159. a.

‡ Coke li. 22. fo. 25.

† 12 H. 4. fo. 20.

taments. And that all judgments to be given upon any of the said writs original so to be devised or granted of or for any the premises, or any of them: and all fines to be levied and knowledged in any of the King's said courts, thereof shall be of like force and effect in the law, to all intents and purposes, as judgments given, and fines levied of lands, tenements, and hereditaments, in the same courts, upon writs original therefore duly pursued and prosecuted, albeit no such form of writs original out of the said court of *Chancery* have heretofore proceeded or been awarded.

S. 8. " Provided always, that this last act shall not extend nor be expounded to give any remedy, cause of action, or suit in the courts temporal, against any person or persons which shall refuse or deny to set out his or their tithes, or which shall detain, withhold, or refuse to pay his tithes or offerings, or any parcel thereof; but that in all such cases the person or party being ecclesiastical or lay person, having cause to demand, or have the said tithes or offerings, and thereby wronged or grieved, shall take and have their remedy for their said tithes or offerings in every such case in the spiritual courts, according to the ordinance in the first part of this act mentioned, and not otherwise: any thing therein expressed to the contrary thereof notwithstanding.

Remedy shall be had for tithes and offerings in the spiritual courts, and not in the temporal.

This act was also made upon occasion of the dissolution of monasteries, and which was chiefly intended to enable laymen, who, by their dissolution, had estates or interests in parsonages or vicarages impropriate, or otherwise in tithes, to sue for subtraction of tithes in the ecclesiastical courts. 3 *Burn's Eccles. Law*, 485.

ACTS of PARLIAMENT.

*See stat. 2 & 3 Edw. VI. chap. 13. 2 Co. Rep. 43.
R. Raym. 452. 534. Crayborne and Taylor, Hil.
10 Geo. I. ante, p. 193. Leigh and Maudslay,
Hil. 4 Geo. II. ante, p. 322.*

32 HENRY VIII. CHAP. 24.

*The Lands and Goods of St. John's of Jerusalem
shall be in the King's Disposition.*

The causes why
the houses of St.
John's of Jeru-
salem were dis-
solved, and their
lands given to
the King.

SECT. I. "THE lords spiritual and temporal,
and the commons in this present
parliament assembled, having credible knowledge,
that divers and sundry the King's subjects, cal-
led the knights of the *Rhodes*, otherwise called
knights of St. *John's*, otherwise called friers of the
religion of St. *John of Jerusalem* in *England*, and of
a like house being in *Ireland*, abiding in the parties
of beyond the sea, and having as well out of this
realm, as out of *Ireland* and other the King's do-
minions, yearly great sums of money for mainte-
nance of their livings: have unnaturally, and
contrary to the duty of their allegiances sustained,
and maintained the usurped power and authority of
the Bishop of *Rome*, lately used and practised with-
in this realm, and other the King's dominions, and
have not only adhered themselves to the said bishop,
being common enemy to the King our sovereign
lord, and to this his realm, untruly upholding,
knowledging, and affirming maliciously and trait-
terously, the same bishop to be supreme and chief
head of Christ's church by God's holy word, in-
tending thereby to subvert and overthrow the good
and godly laws and statutes of this realm, their na-
tural country, made and grounded by authority of
holy church, by the most excellent wisdom, policy,
and

and goodness of the King's Majesty, with the whole assent and consent of the realm, for the abolishing, expulſing and utter extinction of the ſaid uſurped power and authority, but alſo have deſamed and ſlandered as well the King's majeſty, as the noble men, prelates and other the King's true and loving ſubjects of this realm, for their good and godly proceeding in that behalf, have therefore deeply pondered and conſidered, that like as it is, and was a moſt godly act of the King's moſt royal Majeſty, and the ſaid noblemen, prelates, and commons of this realm, utterly to expulſe and aboliſh not only from this realm, but alſo from other the King's dominions, the ſaid uſurped power and authority of the Biſhop of *Rome*, and alſo the hypocritical and ſuperſtitious religion in this realm, and other the King's dominions, being his members and adherents, having their original erecſion and foundation by the ſaid uſurped authority, by expulſing whereof God's holy word, neceſſary for increaſe of virtue and ſalvation of Chriſtian ſouls, is not only purely and ſincerely advanced and ſet forth, but alſo their extorted exactions of innumerable ſums of money, craftily exhausted out of this realm, and of other the King's dominions, by the colour of the ſaid uſurped authority is removed and taken away, to the ineſtimable benefit and commodity of the King's loving ſubjects, ſo in like manner of wiſe, it ſhould be moſt dangerous to be ſuffered or permitted within this realm, or in any other the King's dominions, any religion being ſparks, leaves, and imps of the ſaid root of iniquity: conſidering alſo that the Iſle of *Rhodes*, whereby the ſaid religion took their old name and foundation, is ſurpriſed by the *Turk*: and that it were, and is much better, that the poſſeſſions in this realm, and in other the
King's

King's dominions appertaining to the said religion, should rather be employed and spent within this realm, and in other the King's dominions, for the defence and surety of the same, than converted to and among such unnatural subjects, which have declined not only from their natural duty of obedience that they ought to bear unto the King our sovereign lord, but also from the good laws and statutes of this realm their natural country, daily doing and attempting privily and craftily all that they can, to subvert the good and godly policy in the which, thanks be to God, and our most dread sovereign lord, this realm, and other the King's dominions now stand in. In consideration whereof, the said lords spiritual, and temporal, and the commons in this present parliament assembled, most humbly beseeching the King's most royal Majesty, that it may be enacted by his highness, and by the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, that the corporation of the said religion, as well within this realm, as within the King's dominion and land of *Ireland*, by whatsoever name or names they be founded, incorporated or known, shall be utterly dissolved and void to all intents and purposes. And that Sir *William Weston*, knight, now being prior of the said religion of this realm of *England*, but shall not be named or called from henceforth prior of *St. John's of Jerusalem in England*, but shall be called by his proper name of *William Weston*, knight, without further addition touching the said religion. And that likewise *John Rausen*, knight, now being prior of *Kilmainham in Ireland*, shall not be called or named from henceforth prior of *Kilmainham in Ireland*, but only by his proper name of *John Rausen*, knight, without further addition

The corporation
or the religion of
St. John's in
England and *Ireland*
shall be
dissolved.

The priors and
confreres of *St. John*
shall be
called by their
own names, and
surnames without
any addition of
their religion.

addition touching the said religion: nor that any of the brethren or confreres of the said religion in this realm of *England*, and land of *Ireland* shall be called knights of the Rhodes, nor knights of *St. John's*, but shall be called by their own proper Christian names and surnames of their parents, without any other additions touching the said religion.

S. 2. " And be it furthermore enacted by authority of this present parliament, that if the said *William Weston*, or any of his brethren or confreres of the hospital or house of *St. John of Jerusalem* in *England* now abiding and dwelling within this realm of *England*, or any other person or persons being members professed of or in the said hospital, now dwelling within the said realm, at any time after the first day of *July* next coming, do use or wear within this realm or elsewhere, in or upon any apparel of their bodies, any sign, mark, or token heretofore used, and accustomed, or hereafter to be devised for the knowledge of the said religion, or make any congregations, chapters, or assemblies touching the same religion, or maintain, support, use, or defend any liberties, franchises, or privileges heretofore granted to the said religion by the authority of the Bishop of *Rome*, or of the see of the same, that then every of them, so offending, shall incur and run into the pains, forfeitures, and penalties ordained and provided by the Statute of provision and *premunire*, made in the sixteenth year of King *Richard* the Second: and if the said *John Raufon*, knight, or any of his brethren, or confreres of the said hospital, or house of *Kilmainham* in *Ireland*, or any other person or persons, being members professed of or in the said hospital of *Kilmainham*, now abiding and

The penalty for the said priors and confreres to wear any sign of their religion, or to make any assemblies touching the same, or to defend any privileges thereof.

now

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now dwelling within the said land of *Ireland*, at any time after the last day of *September* next coming, do use, or wear within this realm, or within the said land of *Ireland*, or elsewhere, in or upon any apparel of their bodies, any sign, mark or token heretofore used and accustomed, or hereafter to be devised, for the knowledge of the same religion, or make any congregations, chapters, or assemblies touching the same religion, or maintain, support, use, or defend any manner of liberties, franchises, or privileges heretofore granted to the same by authority of the Bishop of *Rome* or of the see of the same: that then every of them, so offending, shall incur and run into the pains, forfeitures, and penalties, ordained and provided by the said statute of provision and *premunire*, made in the said sixteenth year of *Richard* the Second.

S. 3. "And be it likewise enacted by the authority aforesaid, that if any the knights or confreres of the said religion being the King's natural subjects, which now inhabit, abide, and dwell out of any the King's dominions, at any time after the first day of *February* next coming, do offend in any of the articles or offences next above rehearsed, that then every of them so offending shall incur and run into the pains, forfeitures, and penalties next above remembered.

The King shall have all the manors, lands, &c. lately belonging to the prior and brethren of *St. John* in *England* and *Ireland*,

S. 4. "And be it further enacted by the authority aforesaid, that the King's Majesty his heirs and successors, shall have and enjoy all that hospital, mansion-house, church, and all other houses, edifices, buildings, and gardens to the same belonging, being near to the city of *London* in the county of *Middlesex*, called the house of *St. John's* of *Jerusalem* in *England*,

England, and also all that hospital, church, and house of *Kilmainham* in the land of *Ireland*, and all and singular castles, honours, manors, meases, lands, tenements, rents, reversions, services, woods, meadows, pastures, parks, warrens, liberties, franchises, privileges, parsonages, tithes, pensions, portions, knights fees, advowsons, commandries, preceptories, contributions, responcions, rents, titles, entries, conditions, covenants, and all other possessions and hereditaments, of what natures, names, or qualities soever they be, or lie within this realm of *England*, or within the land of *Ireland*, or elsewhere within any of the King's dominions, which appertained or belonged to the said religion, or to the priors, masters, or governors, knights, or other ministers professed of, or in the same, by the pretence, or in the right of the said religion: and all and singular goods, chattles, debts, arrearages of rents, and farms, and all other things real and personal, whatsoever they be, whereof or whereunto any of the said priors, brethren or confreres, or persons professed in the said religion, can have nor claim any particular propriety to their own proper use by the rules and statutes of the said religion: to have and to hold the premises, and every of them, to our said sovereign lord and to his heirs and successors for ever, to use and employ, by his most excellent wisdom and discretion, at his own free will and pleasure. And that his Highness shall be deemed and adjudged in the real and actual possession of the premises, by virtue and authority of this present act, saving to all persons and bodies politick, their heirs and successors, and the heirs and successors of every of them (other than the said prior of *St. John's of Jerusalem* in *England*, and the said prior of *Kilmainham*, in the land of *Ireland*,
and

A saving of the
right of others.

and the brethren or confreres of every of them, and the successors of every of them, and all and every other person and persons of the said religion, and their successors of every of them, and the successors of every of them) all such right, title, interest, possession, leases, grants, annuities, fees, offices, corrodies, reversions, rents, and services, rent-charges, commons, rights, titles, entries, actions, petitions, pensions, portions, and all other hereditaments of what names, natures, or qualities soever they be, which they have, should, or ought to have had, if this act had never been had, be made: any thing this act to the contrary thereof notwithstanding.

Sir William Weston prior of St. John shall have 2000 l. pension during his life.

S. 5. " Provided alway, and be it enacted by the authority of this present parliament, by the agreement and assent of the King's most excellent goodness, that the said *William Weston*, during his natural life, shall have and enjoy to his own use, out of the premises yearly, one annual rent or pension of one thousand pounds to be paid to him or his assigns at the feast of St. *Michael* the archangel, and the annunciation of our Lady, by even portions, and also shall have to his own use such reasonable portion of the goods and chattels appertaining to the same religion as it shall please the King's Majesty of his most excellent goodness to limit and appoint of the same. And that the said *John Rauson* knight shall have and enjoy to his own use, out of such possessions as he now hath in *England* and *Ireland*, one annual pension of five hundred marks to be paid to him or to his assigns at the feasts aforesaid by even portions, and likewise shall have to his own proper use, such reasonable portion of the goods of the said religion, as shall please the King's Majesty

John Rauson
500 marks.

jeſty of his moſt excellent goodneſs to limit and appoint for the ſame. And that *Clement Weſt*, being one of the confreres of the ſaid religion, ſhall have and enjoy, during his natural life, one annuity or penſion of two hundred pounds. And that *Thomas Pemberton*, another of the confreres of the ſaid religion, ſhall have and enjoy, yearly during his natural life, one yearly penſion of fourſcore pound. And that *Giles Ruſſel*, another of the ſaid confreres, ſhall have and enjoy, yearly during his natural life, one yearly penſion of one hundred pound. And that *George Aylmer*, another of the ſaid confreres, ſhall have and enjoy, yearly during his natural life, one yearly penſion of one hundred pound. And that *John Sutton*, another of the confreres of the ſaid religion, ſhall have and enjoy, yearly during his natural life, one yearly penſion of two hundred pound. And that *Edward Bellingham*, another of the confreres of the ſaid religion, ſhall have and enjoy, yearly during his natural life, one yearly penſion of one hundred pound. And that *Edward Browne*, another of the confreres of the ſaid religion, ſhall have and enjoy, yearly during his natural life, one yearly penſion of fifty pound. And that *Edmund Huſſe*, another of the confreres of the ſaid religion, ſhall have and enjoy, yearly during his life natural, one yearly penſion of one hundred marks. And that *Ambroſe Cove*, another of the confreres of the ſaid religion, ſhall have and enjoy, yearly during his natural life, one yearly penſion of one hundred marks. And that *Thomas Copledike*, another of the confreres of the ſaid religion, ſhall have and enjoy, during his natural life, one yearly penſion of fifty pound.

Clement Weſt,
200 l.

Thomas Pemberton,
80 l.

Giles Ruſſel, 100 l.

George Aylmer,
100 l.

John Sutton,
200 l.

Edward Bellingham, 100 l.

Edward Browne,
50 l.

Edmund Huſſe,
100 marks.

Ambroſe Cove,
200 marks.

Thomas Copledike,
50 l.

8. 6. “ And that *Cuthbert Leighton*, another of the confreres of the ſaid religion, ſhall have and enjoy,

Cuthbert Leighton
60 l.

Richard Broke,
200 marks.

Henry Poole,
200 marks.

William Tyrell,
30 l.

John Raufen,
200 marks.

Confreres pro-
fessed having no
certain living,
20 l. a piece.

enjoy, yearly during his natural life, one yearly pen-
sion of threescore pound. And that *Richard Broke*,
another of the confreres of the said religion, shall
have and enjoy, yearly during his natural life, one
yearly pension of one hundred marks. And that
Henry Poole, another of the confreres of the said
religion, shall have and enjoy, yearly during his
natural life, one yearly pension of two hundred
marks. And that *William Tyrell*, another of the
confreres of the said religion, shall have and enjoy,
yearly during his natural life, one yearly pension of
thirty pound. And that *John Raufen*, another ano-
ther of the confreres of the said religion, shall have
and enjoy, yearly during his natural life, one yearly,
pension of two hundred marks. And that *Anthony
Rogers, Ousual Massingberd, James Huffs, Thomas
Thornel, Nicolas Hupton Philip Babington, Henry
Ierad, Dunstan Nudogate, Nicolas Lambert, and Da-
vid Gonson*, being confreres professed in the said re-
ligion, and having at this present time no manner
of certainty towards their living, shall have and en-
joy, every of them yearly, one yearly pension of ten
pounds, the said several yearly pensions to be paid
at the feast of *St. Michael* the archangel, and the
annunciation of our Lady, by even portions, as is
aforesaid. And over this, every of the said con-
freres above named and mentioned shall have to their
own proper uses such reasonable portions of the goods
and chartels, being in their hands and possessions,
appertaining to the said religion, as it shall please
the King's Majesty to limit and appoint to every
of them of the same.

Professed per-
sons omitted in
this statute.

S. 7. " And be it also enacted by the authority
aforesaid, that if any of the King's subjects being
professed in the said religion, be negligently for-
gotten

gotten or omitted out of this present act, for lack of knowledge of their names, that yet nevertheless every of them so forgotten, and not now presently named or remembred, shall have and enjoy such honest, convenient, and reasonable yearly pension, and portion of goods, as shall please the King's Majesty to limit, and appoint in that behalf.

S. 8. " Provided always, that none of the said priors, or confreres of the said religion, shall have and enjoy any of the pensions afore specified, except such of them as be the King's true and faithful subject. Any thing in this act to the contrary notwithstanding.

Only true subjects shall have pensions.

S. 9. " Provided also, and be it enacted by the authority afore said, that *John Maplesden*, otherwise called *John Mableston* clerk, subprior of the said religion of the said hospital of St. *John of Jerusalem* in *England*, *William Ernestes* clerk, master of the temple of *London*, *Walter Lymsey* and *John Winter* chaplains there, and every of them, shall have, perceive, and enjoy during their natural lives, all such mansion-houses, stipends, and wages, and all other profits of money, in as large and ample manner, as they or any of them now lawfully have the same, without let or interruption of the King our Sovereign Lord, his heirs or successors, or any other his officers, or ministers, the said master and two chaplains of the *Temple* doing their duties and services there, as they have accustomed to do.

The subprior, master of the *Temple*, and two chaplains shall retain their houses and wages.

S. 10. " And be it further enacted by authority afore said, that the said *William Weston* and *John Raufon*, and every of the said brethren, or confreres afore named, and the said superior, and the said

The foresaid parties shall have the King's letters patents of the things before granted.

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master of the *Temple*, and two chaplains, and every of them, being the King's true and faithful subjects, upon their reasonable suits and petitions, shall have sufficient letters patents of the said several yearly annuities, pensions, manſions, ſtipends, and wages, and other profits of money to them limited by authority of this act, under the King's great ſeal, without any fine or fee to be paid to the King's uſe for the ſame.

The confreres and brethren diſcharged of their obedience to their priors, and may ſue and be ſued by their proper names.

S. 11. “ And be it further enacted by the authority aforeſaid, that the ſaid brethren or confreres of the ſaid religion, and all other obediencers being members of the ſaid religion, ſhall be acquitted and diſcharged of their obedience, that they have uſed to bear and give unto the ſaid *William Weſton*, or to the ſaid *John Rauſon*, or to any other of the ſaid religion by the ordinances, uſages, rules, or ſtatutes of the ſaid religion. And that as well the ſame *William Weſton*, and *John Rauſon*, as the ſaid brethren or confreres of the ſaid religion called knights, as is aforeſaid, and every of them being the King's ſubjects born in this realm of *England*, or in the land of *Ireland*, or elſewhere within any the King's dominions, ſhall be enabled to ſue and be ſued, by their own ſaid proper names and ſurnames, and have ſuch capacity, and other freedom, liberties, and privileges to all intents and purpoſes, in as large and ample manner, form, faſhion and condition, as in the firſt ſeſſion of this preſent parliament was ordained and enacted for religious perſons: any ſtatutes, ordinances, laws, cuſtoms, uſages, or any other thing or things, to the contrary thereof in any wiſe notwithstanding.

31 Hen. VIII.
chap. 6.

S. 12. “ Provided alſo, and be it enacted by the authority aforeſaid, that all privileges of ſanctuaries,
3 heretofore

heretofore used, or claimed in mansion-houses, and other places, commonly called *St. John's* hold, and all other sanctuaries heretofore used in any place within this realm, or in *Ireland*, which heretofore hath been belonging to any of the said hospitals, shall stand and be utterly void, and of none effect, for or concerning any sanctuary, or privileges of sanctuary, there to be had or used, the privileges of common churches and churchyards, applied and used to God's service, and burials of Christian people only excepted.

§. 13. " And be it also enacted by the authority aforesaid, that all the said manors, meases, lands, tenements, and all and singular other possessions, privileges, liberties, franchises, and other hereditaments granted to the King's Majesty by this act, shall be in the survey, rule, order, and governance of the chancellor and other ministers and officers of the court of the augmentations of the revenues of the King's crown, in like manner, form, fashion and condition, as the possessions of the lands of the abbeyes, monasteries, or priories suppressed or surrendered been.

All the lands of *St. John's* shall be in the government of the court of augmentations.
A. L. T. 1 M. 10.

§. 14. " And be it also enacted by the authority aforesaid, that all and every such person and persons as be now confreres of the said hospital or hospitals, and at this present time of out of this realm shall before the feast of *Pentecost*, which shall be in the year of our Lord God, a thousand five hundredth forty and one, return into the same, and here personally present themselves to the King's Majesty, or to the lord chancellor of *England*, the lord treasurer, the lord president of the King's council, and the lord privy seal, or two of them for the time be-

The confreres which be out of the realm shall return and submit themselves to the obedience of the law.

ing at the least, both knowing themselves to be his highness true and loyal subjects, and declaring themselves to be content willingly to observe, keep and maintain all the laws and statutes of this realm, as to true and good subjects appertaineth : or else the same confrere or confreres, making default of such his repair and presentment, as is before said, shall in no wise claim and enjoy any pension by virtue of this act : any thing in the same contained notwithstanding : unless the person or persons so making default of repair, and appearance, can shew and declare themselves to have been detained, or by a necessary mean impeached and letted of their will, purpose, and desire to have come hither, and to have accomplished the whole contents of this statute accordingly."

By the suppression of these greater houses, by the two last acts, the King obtained a revenue of above one hundred thousand pounds a year, besides a large sum in plate and jewels ; but the religious of these houses had almost all of them something given for their present subsistence, and the pensions assigned them for life were to continue until they should be preferred to some dignity or cure of greater value than these pensions. 2 *Burn's Eccles. Law*, 481.

See *Hanson and Fielding*, E. 13 Geo. I. *ante*, p. 231. *Corporation of Bury Saint Edmund's*, and *Lewis*, E. 12 Geo. II. *ante*, p. 364.

37 HEN. VIII. CHAP. 12.

In what manner they shall be punished who refuse to pay tithes, due to be paid in London.

Stat. 1. “ **W**HERE of late time contention, strife, and variance hath risen and grown within the city of *London* and the liberties of the same, between the parsons, vicars, and curates of the said city, and the citizens and inhabitants of the same, for and concerning the payment of tithes, oblations, and other duties within the said city and liberties. For appeasing whereof, a certain order and decree was made thereof by the most reverend father in God, *Thomas* archbishop of *Canterbury*, metropolitan, and primate of all *England*, *Thomas Audeley* knight, Lord *Audeley* of *Walden*, and then lord chancellor of *England* now deceased, and other of the King’s Majesty’s most honourable privy council, and also the King’s letters patents and proclamation was made thereof, and directed to the said citizens concerning the same; whereupon it was after enacted in the parliament holden at *Westminster* by prorogation the fourth day of *February*, in the twenty-seventh year of the King’s Majesty’s most noble reign, by authority of the same parliament, that the citizens and inhabitants of the same city should, at *Easter* then next coming, pay unto the curates of the said city and suburbs, all such and like sums of money for tithes, oblations, and other duties, as the said citizens and inhabitants, by the order of the said lord chancellor, and other the King’s most honourable council, and the King’s said proclamation, paid or ought to have paid by force and virtue of the said order. at *Easter*, which was in the year of our Lord God, one thou-

A rehearsal of
the stat. of 27
H. 8. chap. 21.
concerning the
payment of tithes
in *London*.

sand five hundred and thirty-five; and the same payments so to continue from time to time, until such time as any other order or law should be made, published, ratified, and confirmed by the King's Highness, and the two and thirty persons by his Grace to be named, as well for the full establishment concerning the payment of all tithes, oblations, and other duties of the inhabitants within the said city, suburbs, and liberties of the same, as for the making of other ecclesiastical laws of this realm of *England*; and that every person denying to pay, as is aforesaid, should, by the commandment of the mayor of *London* for the time being, be committed to prison, there to remain until such time as he or they should have agreed with the curate, or curates for their said tithes, oblations, and other duties, as is aforesaid, as in the said act more plainly appeareth: sithen which act divers variances, contentions, and strifes are newly risen and grown between the said parsons, vicars, and curates, and the said citizens and inhabitants, touching the payment of their tithes, oblations, and other duties, by reason of certain words and terms specified in the said order, which are not so plainly and fully set forth as is thought convenient and meet to be: for appeasing whereof, as well the said parsons, vicars, and curates, as the said citizens and inhabitants have compromitted and put themselves to stand to such order and decree touching the premisses, as shall be made by the said right reverend father in God, *Thomas* Archbishop of *Canterbury*, metropolitan and primate of *England*, the right honourable Sir *Thomas Wryothesly* knt. Lord *Wryothesly* and lord chancellor of *England*, the right honourable *Thomas* Duke of *Norff*. lord treasurer of *England*, the right honourable Sir *William Pawlet* knt. Lord *St. John*, lord president of the council, and lord great master of of the King's most

Arbitrators chosen between the parsons, vicars and curates of *London*, and the citizens and inhabitants of the same, touching the payment of tithes.

most honourable household, the right honourable Sir *John Russell*; knt. Lord *Russell*, and Lord privy seal, the right honourable *Edward* Earl of *Herif*. Lord great Chamberlain of *England*, the right honourable *John* Viscount *Lisle* high Admiral of *England*, Sir *Richard Lister* knt. chief justice of *England*, Sir *Edward Mountague* knt. chief justice of the common bench at *Westminster*, and Sir *Roger Cholmeley* knt. chief baron of the *Exchequer*, for a final end and conclusion to be had and made touching the premisses for ever. And to the intent to have a full peace, and perfect end between the said parties, their heirs and successors, touching the said tithes, oblations, and other duties for ever : Be it enacted by authority of this present parliament, That such end, order, and direction, as shall be made, decreed, and concluded by the fore-named archbishop, lords, and knights, or any six of them, before the first day of *March* next ensuing, of, for, and concerning the payments of the tithes, oblations, and other duties within the said city, and the liberties of the same, and inrolled in the King's high court of chancery of record, shall stand, remain, and be as an act of parliament, and shall bind as well all citizens and inhabitants of the said city and liberties for the time being, as the said parsons, vicars, curates, and their successors for ever, according to the effect, purport, and intent of the said order and decree, so to be made and enrolled.

And that every person denying to pay any of his or their tithes, oblations, or other duties contrary to the said decree so to be made, shall by the commandment of the mayor of *London* for the time being, and in his default or negligence, by the lord chancellor of *England* for the time being, be committed to prison, there to remain till such time as he or they have agreed with the curate and curates for his or

The penalty of them which refuse to pay their tithes according to the arbitrator's decree.

their said tithes, oblations, and other duties, as is aforesaid.

THE DECREE.

London.

AS touching the payments of tithes in the city of *London*, and the liberties of the same: it is fully ordered and decreed, by the most reverend father in God, *Thomas* Archbishop of *Canterbury*, primate and metropolitan of *England*, *Thomas* Lord *Wryethesty*, lord chancellor of *England*, *William* Lord *St. John*, president of the King's Majesty's council, and lord great master of his Highness's household, *John* Lord *Russell*, lord privy seal, *Edward* Earl of *Hertford*, lord great chamberlain of *England*, *John* Vicount *Lisle*, high admiral of *England*, *Richard* Lister knt. chief justice of *England*, and *Roger Cholmeley*, knt. chief baron of his Grace's *Exchequer*, this present twenty-fourth day of *February*, anno Domini, *secundum cursum & computationem Ecclesiæ Anglicanæ, millesimo quingentesimo quadagesimo quinto*, according to the statute in such case lately provided, That the citizens and inhabitants of the said city of *London*, and liberties of the same, for the time being, shall yearly without fraud or covin for ever pay their tithes to the parsons, vicars, and curates of the said city, and their successors for the time being, after the rate hereafter following, that is to wit: Of every ten shillings rent by the year of all and every house and houses, shops, warehouses, cellars, and stables, and every of them within the said city and liberty of the same, sixteen pence *ob.* And of every twenty shillings rent by year of all and every such house and houses, shops, warehouses, cellars, and stables, and every of them within the said city and liberties, two shillings nine pence. And so above the rent of twenty shillings by year, ascending from ten shillings to ten shillings, according to the rate aforesaid.

Parsons, vicars,
curates, tithes.

Item, That where any lease is, or shall be made of any dwelling house or houses, shops, warehouses, cellars, or stables, or of any of them, by fraud or covin, reserving less rent than hath been accustomed, or is, or that any such lease shall be made without any rent reserved upon the same, by reason of any fine or income paid beforehand, or by any other fraud or covin: that then in every such case the tenant or fermor, tenants or fermors, thereof shall pay for his or their tithes of the same, after the rate aforesaid, according to the quantity of such rent or rents, as the same house or houses, shops, warehouses, cellars, or stables, or any of them were last letten for, without fraud or covin, before the making of such lease.

Item, That every owner or owners, inheritor or inheritors of any dwelling-house, or houses, shops, warehouses, cellars, or stables, or any of them within the said city and liberties, inhabiting, or occupying the same himself, or themselves, shall pay after such rate or tithes, as is aforesaid, after the quantity of such yearly rent as the same was last letten for, without fraud or covin.

Item, If any person or persons have taken, or hereafter shall take any mease or mansion place by lease, and the taker or takers thereof, his or their executors or assigns, doth or shall inhabit in part thereof, and have or hath within eight years last past before this order, or hereafter will or shall let out the residue of the same: that then in such case the principal farmor or farmors, or first taker or takers thereof, his or their executors or assigns, shall pay his or their tithes after the rate aforesaid, according to his or their quantity therein, and that his or their executors, assignee or assignees, shall pay his or their tithes after the rate aforesaid, according to the quantity of his or their rent by year.

And

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And that if any person or persons have, or shall take divers mansion-houses, shops, warehouse, cellars, or stables in one lease, and letteth, or shall let out one or more of the said houses, and keepeth, or shall keep one or more in his or their own hands, and inhabiteth or inhabit in the same : that then the said taker or takers, and his and their executors or assigns shall pay his or their tithes after the rate above said, according to the quantity of the yearly rent of such mansion house or houses, retained in his or their hands. And that his assignee or assignees, of the residue of the said mansion house or houses, shall pay his or their tithes after the rate abovesaid, according to the quantity of their yearly rents.

Item, If such fermor or fermors, or his or their assigns of any mansion house or houses, warehouses, shops, cellars, or stables, hath at any time within eight years last past, or shall hereafter let over all the said mansion house or houses contained in his or their lease, to one person, or to divers persons : that then the inhabitants, lessees, or occupiers of them, and every of them, shall pay their tithes, after the rate of such rents, as the inhabitants, lessees, or occupiers and their assignee or assignees have been or shall be charged withal, without fraud or covin.

Item, If any dwelling house within eight years last past, was or hereafter shall be converted into a warehouse, storehouse, or such like, or if a warehouse, store-house, or such like, within the said eight years was, or hereafter shall be converted into a dwelling house : that then the occupiers thereof shall pay tithes for the same, after the rate above declared of mansion-house rents.

Item,

Item, That where any person shall demise any diehouse, or brewhouse, with implements convenient and necessary for dying or brewing, reserving a rent upon the same, as well in respect of such implements as in respect of such diehouse, or brewhouse: that then the tenant shall pay his tithes after such rate as is abovesaid, the third penny abated. And that every principal house or houses, with key or wharf, having any crane or gibbet belonging to the same, shall pay after the like rate of their rents, as is abovesaid, the third penny abated, and that other wharfs belonging to houses having no crane or gibbet, shall pay for his tithes as shall be paid for mansion-houses, in form abovesaid.

Item, That where any mansion-house with a shop, stable, warehouse, wharf with crane, timberyard, teinteryard, or garden belonging to the same, or as parcel of the same, is or shall be occupied together, that if the same be hereafter severed or divided, or at any time within eight years last past were severed or divided: that then the fermor or fermors, occupier or occupiers thereof, shall pay such tithes as is above-said for such shops, stable, warehouses, wharf with crane, timberyard, teinteryard, or garden abovesaid so severed or divided, after the rate of their several rents thereupon reserved.

Item, That the said citizen and inhabitants shall pay their tithes quarterly, that is to say, at the feast of *Easter*, the nativity of Saint *John Baptist*, the feast of Saint *Michael* the archangel, and the nativity of our Lord, by even portions.

Item, That every householder, paying ten shillings rent or above, shall, for him or herself, be discharged of their four offering days: but his wife, children,

ACTS of PARLIAMENT.

children, servant, or others of their family, taking their rights of the church at *Easter*, shall pay two pence for their four offering days yearly.

Provided always, and it is decreed, that if any house or houses which hath been, or hereafter shall be letten for ten shillings rent by year, or more, be, or hath at any time within eight years last passed, or hereafter shall be divided and leaséd into small parcels or members, yielding less yearly rent than ten shillings by year: that then the owner or owners, if he or they dwell in any part of such house, or else the principal lessee and lessees, if the owner or owners do not dwell in some part of the same, shall from henceforth pay for his or their tithes after such rate of rent, as the same house was accustomed to be letten for, before such division or dividing into parts or members; and the underfermor and fermors, lessee and lessees, to be discharged of all tithes for such small parcels, parts or members, rented at less yearly rent than ten shillings by year without fraud or covin, paying two pence apiece yearly for their four offering days.

Provided alway, and it is decreed, that for such gardens as appertain not to any mansion-house, and which any person or persons holdeth, or shall hold in his or their hands for pleasure, or to his own use: that the then person so holding the same, shall pay no tithes for the same. But if any person or persons, which holdeth or shall hold any such garden, containing half an acre or more, doth or shall make any yearly profit thereof by way of sale: that then he or they shall pay tithes for the same, after such rate of his rent, as is herein first above specified.

Provided also, that if any such gardens now being of the quantity of half an acre, or more, be hereafter

hereafter by fraud or covin divided into less quantity or quantities, then to pay tithes according to the rate abovesaid.

Provided alway, that this decree shall not extend to the houses of great men, or noblemen, or noble women, kept in their own hands, and not letten for any rent, which in times past hath paid no tithes, so long as they shall so continue unletten. Nor to any halls of crafts or companies, so long as they be kept unletten, so that the same halls in times past have not used to pay any tithes.

Provided always, and it is decreed, that this present order, and decree, shall not in any wise extend to bind or charge any sheds, stables, cellars, timber-yards, ne teinter-yards, which were never parcel of any dwelling-house, ne appertaining or belonging to any dwelling-house, ne have accustomed to pay any tithes: but that the said citizens and inhabitants shall thereof be quit of payment of any tithes, as it hath been used and accustomed.

Provided also, and it is decreed, that where less sum than after sixteen-pence half-penny in the ten shillings rent, or less sum than two shillings ninepence in the twenty shillings rent, hath been accustomed to be paid for tithes: that then in such places the said citizens and inhabitants shall pay but only after such rate as hath been accustomed.

Item, It is also decreed, that if any variance, controversy, or strife, do or shall hereafter arise in the said city for non-payment of any tithes: or if any variance or doubt arise upon the true knowledge or division of any rent or tithes, within the liberties of the

the said city, or of any extent or assise thereof, or if any doubt arise upon any other thing contained within this decree: that then upon complaint made by the party grieved, to the mayor of the city of *London* for the time being, the said mayor, by the advice of counsel, shall call the said parties before him, and make a final end in the same, with costs to be awarded by the discretion of the said mayor and his assistants, according to the intent and purport of this present decree.

And if the said mayor make not an end thereof within two months after complaint to him made, or if any of the said parties find themselves aggrieved: that then the Lord Chancellor of *England* for the time being, upon complaint to him made within three months then next following, shall make an end in the same, with such costs to be awarded as shall be thought convenient, according to the intent and purport of the said decree.

Provided always, that if any person or persons take any tenement for a less rent than it was accustomed to be letten for, by reason of great ruin or decay, brenning, or such like occasions or misfortunes: that then such person or persons, his executors or assigns, shall pay tithes only after the rate of the rent reserved in his or their lease, and none otherwise, as long as the same lease shall endure."

Rent for half a year, and afterwards for another half-year, is a yearly rent, or a rent by the year, within the meaning of the above decree. *Noy Rep.* 130.

The right to tithes subsists immediately upon this statute, which lays them upon every house; no exemption

emption shall be allowed, but to such houses as are specially exempted by the statute itself. *Cra. Eliz.* 276.

If so much rent be reserved as was accustomed to be paid at making the above decree, (whatsoever fine or income be paid) the parson can aver no covin, for the words of the decree are, "where any lease is or shall be made of any dwelling-house by fraud or covin, in reserving less rent than has been accustomed," So as if the accustomed rent be reserved, no fraud can be alledged; for the fraud by the decree is, when less rent than was then accustomed to be paid, is reserved, or if no rent at all be reserved; for then tithe shall be paid according to the rent that then was last before reserved to be paid.

The decree consisteth of four parts :

1. Where the accustomed rent was reserved,
2. Where the rent was encreased, there the tithes should be paid according to the whole rent,
3. Where less rent was reserved, and
4. Where no rent was reserved, but had been formerly reserved.

And this act and decree are very beneficial for the clergy of *London*, in respect of that which they had before.

It was resolved,

That as to such houses as were never letten to farm, but inhabited by the owner, is a *casus omiffus*, and that they shall pay no tithes by virtue of the decree.

That where the decree saith, "where no rent is reserved by reason of any fine or income paid beforehand,"

hand," albeit no fine or income be paid in that case, yet if no rent be reserved, the parson shall have his tithes according to the decree; for that is but for an example or cause why no rent is reserved, and whether any fine or income were paid or not, is not material as to the parson.

That the parson cannot sue for the said tithes in the ecclesiastical court; for that the act and decree that raised and gave these kind of tithes, did limit and appoint how and before whom the same should be sued for, and did appoint new and special judges to hear and determine the same. 2 *Inst.* 660.

The complaint mentioned in the act must be in writing, and not by word of mouth only. *Noy. Rep.* 130.

It was pleaded in the year 1658, that the right of tithes, upon the foundation of the above act, could not be cognizable in the *Exchequer*, by reason of the provision therein made for determining of all controversies before the lord mayor or the lord chancellor, it was held clearly by the barons, that the court of *Exchequer* had jurisdiction in the cause, because the act had no negative words in it. 3 *Burn's Eccles. Law*, 514.

Upon this Doctor *Gibson* shrewdly remarks, that if affirmative words will not exclude the temporal court, it may be difficult to find a good reason why they should exclude the spiritual court. *Gibb. Cod. Jur. Eccles. Angl.* 1223.

After all, notwithstanding the above settlement by the aforesaid decree, divers prescriptions for the payment

ment of less rents than the parsons might require by the said settlement (as to pay ten shillings for the tithe of an house, although the rent thereof was forty pounds a year or more) have been gained and allowed. 3 *Burn's Eccles. Law.* 514.

See Doctor *Burgess's* case, *Trin.* 4 *Car.* I. *ante*, p. 13. *Sheffield and Serjeant*, *East.* 9 *Car.* II. *ante*, p. 23. *Langham and Baker*, *Trin.* 10 *Car.* II. *ante*, p. 24. *Savage and Wood's* case, *Mich.* 12 *Anno*, *ante*, p. 440. *Pecock and Titmarsh*, *Hil.* 8 *Geo.* I. *ante*, p. 162, 163. *Bennet and Trepas*, *Mich.* 9 *Geo.* I. *ante*, p. 168.

EDWARD the SIXTH.

2 & 3 EDW. VI. CHAP. 13.

In what Manner Tithes ought to be paid.

Sec. 1. “**W**HERE in the parliament holden 27 Hen. VIII. chap. 10. at *Westminster*, the fourth day of *February*, in the twenty-seventh year of the reign of the late King, of most famous memory, King *Henry* the Eighth, there was an act made concerning payment of tithes predial and personal. And also in another parliament holden at *Westminster*, the twenty-third day of *July*, in the thirty-second year of the reign of the said late King *Henry* the Eighth, another act was made concerning true payment of tithes and offerings, in which several acts, many and divers things be omitted and left out, which were convenient and very necessary to be added to the same. In consideration whereof, and to the intent the said tithes may be hereafter truly paid, according to the mind of the makers of the said act: be it ordained

32 Hen. VIII. chap. 7.

and enacted by the King our Sovereign Lord, with the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that not only the said acts made in the said twenty-seventh and thirty-second years of the reign of the said late King *Henry* the Eighth, concerning true payment of tithes, and every article and branch therein contained, shall abide and stand in their full strength and virtue: but also be it further enacted by the authority of this present parliament, that every of the King's subjects shall from henceforth truly and justly, without fraud or guile, divide, set out, yield and pay all manner of their predial tithes, in their proper kind, as they rise and happen, in such manner and form as hath been of right yielded and paid, within forty years, next before the making of this act, or of right or custom ought to have been paid. And that no person shall from henceforth take or carry away any such or like tithes which have been yielded or paid within the said forty years, or of right ought to have been paid, in the place or places titheable of the same, before he hath justly divided or set forth, for the tithe thereof, the tenth part of the same or otherwise agreed for the same tithes with the parson, vicar, or other owner, proprietary, or farmer of the same tithes, under the pain of forfeiture of treble value of the tithes so taken or carried away.

Every person shall set forth and pay his predial tithes. *Co. Litt.* 130 *Gibf. Cod. Jur. Eccles. Angl.* 697. *Vern.* 60. 2 *Inst.* 649, 650. *Walsf.'s* *Clerg. Law.* c. 58. 3 *Bar. Rep.* 1873. *Stat.* 8 & 9 *Wil. III.* chap. 11. sect. 3. *Marston and Gleyppole, East.* 13 *Geo. I.* ante, p. 135.

S. 2. And be it also enacted by the authority aforesaid, that at all times whensoever, and as often as the said predial tithes shall be due at the tithing time of the same, it to be lawful to every party, to whom any of the said tithes ought to be paid, or his deputy or servant, to view and see their said tithes to be justly and truly set forth and severed from the nine parts, and

the same quietly to take and carry away. And if any person carry away his corn or hay, or his other predial tithes, before the tithe thereof be set forth, or willingly withdraw his tithes of the same, or of such other things whereof predial tithes ought to be paid : or do stop or let the parson, vicar, proprietary, owner, or other their deputies, or fermors, to view, take, and carry away their tithes, as is abovesaid, by reason whereof the said tithe or tenth is lost, impaired, or hurt, that then upon due proof thereof made, before the spiritual judge, or any other judge, to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting, or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn, or carried away, over and besides the costs, charges, and expences of the suit in the same : the same to be recovered before the ecclesiastical judge, according to the King's ecclesiastical laws.

The penalty for carrying off corn or hay before the tithe be set forth, or for letting the parson to carry it. *Coke* pl. fol. 161. *2 Inst.* 650, 651. *Dugge*, p. 4. c. 14. *Watf.* s. *Cleig.* Law, c. 54. *R. Raym.* 187. 189. *Godb.* 245. *Gibf.* Cod. Jur. *Ecclef. Angl.* 697.

8. 3. And be it further enacted by the authority aforesaid, that all and every person which hath, or shall have any beasts, or other cattle titheable, going, feeding, or depasturing in any waste or common ground, whereof the parish is not certainly known, shall pay their tithes for the increase of the said cattle so going in the said waste or common, to the parson, vicar, propriety, portionary, owner, or other their fermors, or deputies of the parish, hamlet, town, or other place, where the owner of the said cattle inhabiteth or dwelleth.

Tithe of cattle feeding in a waste where the parish is not known. *2 Inst.* 361.

8. 4. " Provided always, and be it enacted by the authority aforesaid, that no person shall be sued, or otherwise compelled to yield, give, or pay any manner of tithes, for any manors, lands, tenements,

Lands discharged of tithes by prescription or composition. *Coke* li. 2. fo. 44. *Plowd.* f. 277. 349. *Ed.* 4. fo. 13. *Fitz.* N. B. fo. 43 k.

or hereditaments, which by the * laws and statutes of this realm, or by any privilege or prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition real.

The tithe of barren heath or waste grounds. 1 *Eliz. Dy. fo. 170. Coke pl. fo. 462. 1 Inst. 655, 656.* 1 *Burn Eccl. Law, 232, 233. Sir Simon Degge, p. 2. c. 19. Keb. Rep. 253. Beardmore and Gilbert, Hil. 11 Geo. I. ante, p. 200. Stockwell and Terry, Trin. 22 & 23 Geo. II. ante, p. 445.*

S. 5. " Provided always, and be it enacted by the authority aforesaid, that all such barren heath or waste ground, other than such as be discharged for the payment of tithes by act of parliament, which before this time have lain barren, and paid no tithes, by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of seven years, next after such improvement fully ended and determined, pay tithe for the corn and hay growing upon the same; any thing in this act to the contrary in any wise notwithstanding.

S. 6. " Provided always, and be it enacted by the authority aforesaid, that if any such barren, waste, or heath ground, hath before this time been charged with the payment of any tithes, and that the same be hereafter improved and converted into arable ground or meadow, that then the owner or owners thereof, shall, during the seven years next following, from and after the same improvement, pay such kind of tithe as was paid for the same before the said improvement: any thing in this act to the contrary in any wise notwithstanding.

Who shall pay their personal tithes. *Degge p. 2. c. 22. 2 Bulst. 141.*

S. 7. " And be it also further enacted by the authority aforesaid, that every person exercising merchandises, bargaining and selling, clothing, handicraft,

* *Coke, pl. fo. 453. 454. 457.*

or other art or faculty, being such kind of persons, and in such places as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay (other than such as been common day labourers) shall yearly, at or before the feast of *Easter*, pay for his personal tithes, the tenth part of his clear gains, his charges and expences, according to his estate, condition, or degree, to be therein abated, allowed, and deducted.

S. 8. " Provided always, and be it enacted, that in all such places where handicrafts men have used to pay their tithes within these forty years, the same custom of payment of tithes to be observed, and to continue: any thing in this act to the contrary notwithstanding.

Handicrafts men having used to pay tithes.

S. 9. " And be it also enacted by the authority aforesaid, that if any person refuse to pay his personal tithes in form aforesaid, that then it shall be lawful to the ordinary of the same diocese, where the party that so ought to pay the said tithes is dwelling, to call the same party before him, and by his discretion to examine him by all lawful and reasonable means, other than by the party's own corporal oath, concerning the true payment of the said personal tithes.

The ordinary may examine him that refuseth to pay his tithes.

S. 10. " Provided always, and be it enacted by the authority aforesaid, that all and every person and persons, which, by the laws or customs of this realm, ought to make or pay their offerings, shall yearly, from henceforth, well and truly content and pay his or their offerings to the parson, vicar, proprietary, or their deputies or fermors, of the parish or parishes where it shall fortune or happen him or them

Payment of offerings. *Gibb Cod. Jur. Eccles. Angl.* 739. Sir Simon Dogge, p. 2. c. 23. *Laurence and Jones, Hil. 11 Geo. 1. ante*, p. 210. *Egerton and Still, S. T. ante*, p. 229. *Cartbow and Edwards, T. 23 & 24 Geo. II. ante*, p. 449.

them to dwell or abide : and that at such four offerings, as at any time heretofore within the space of four years last past, hath been used and accustomed for the payment of the same, and in default thereof, to pay for their said offerings at *Easter* then next following.

Tithe of fish

S. 11. " Provided also, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to any parish, which stands upon and towards the sea coasts, the commodities and occupying whereof consisteth chiefly in fishing, and have by reason thereof used to satisfy their tithes by fish : but that all and every such parish and parishes, shall hereafter pay their tithes according to the laudable customs, as they have heretofore of ancient time, within these forty years, used and accustomed, and shall pay their offerings as is aforesaid.

**Payment of
tithe by houses.**

S. 12. " Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend in any wise to the inhabitants of the city of *London* and *Canterbury*, and the suburbs of the same, ne to any other town or place, that hath used to pay their tithes by their houses, otherwise than they ought or should have done before the making of this act : any thing contained in this act, to the contrary in any wise notwithstanding.

Suits for withholding of
tithes shall be
in the ecclesiastical court.
*R. Raym. 4 c. 2.
534. 3 Burn's
Eccles. Law,
495.*

S. 13. " And be it further enacted by authority aforesaid, that if any person do subtraçt, or withdraw any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrary to the true meaning of this act,

act, or of any other act heretofore made, that then the party, so subtracting or withdrawing the same, may or shall be convented and sued in the King's ecclesiastical court, by the party from whom the same shall be subtracted or withdrawn, to the intent the King's judge ecclesiastical shall and may, then and there, hear and determine the same according to the King's ecclesiastical laws. And that it shall not be lawful unto the parson, vicar, proprietary, owner, or other their fermors, or deputies, contrary to this act, to convent or sue such withholder of tithes, obventions, or other duties aforesaid, before any other judge, than ecclesiastical. And if any archbishop, bishop, chancellor, or other judge ecclesiastical, give any sentence in the foresaid causes of tithes, obventions, profits, emoluments, and other duties aforesaid, or in any of them (and no appeal nor prohibition hanging) and the party condemned do not obey the said sentence, that then it shall be lawful to every such judge ecclesiastical, to excommunicate the said party, so as afore condemned, and disobeying, in the which sentence of excommunication, if the said party excommunicate, wilfully stand and endure still excommunicate, by the space of forty days next after, upon denunciation and publication thereof, in the parish church, or the place or parish where the party so excommunicate is dwelling, or most abiding, the said judge ecclesiastical may then at his pleasure signify to the King, in his court of chancery, of the state and condition of the said party so excommunicate, and thereupon to require process *de excommunicato capiendo*, to be awarded against every such person, as hath been so excommunicate.

Excommunica-
tion of the party
condemned.

S. 14. "Be it further enacted by the authority aforesaid, that if any party at any time hereafter,

A copy of the libel shall be delivered to the judge before a prohibition granted.
 2 Inst. 662.
Gibbs. Cod. Jur. Eccles. Angl. 699, 700. 2 *Salk.* 554. 2 *R. Raym.* 1172.

7 *F. & D.* fo. 242.

A consultation granted for default of proving a suggestion.

for any matter or cause before rehearsed, limited, or appointed by this act, to be sued or determined in the King's ecclesiastical court, or before the ecclesiastical judge, do sue for any prohibition in any of the King's courts, where prohibitions before this time have been used to be granted, that then in every such case, the same party, before any prohibition shall be granted to him or them, shall bring and deliver to the hands of some of the justices, or judges of the same court where such party demanded prohibition, the very true copy of the libel, depending on the ecclesiastical court, concerning the matter, wherefore the party demandeth prohibition, subscribed or marked with the hand of the same party; and under the copy of the said libel shall be written the suggestion, wherefore the party so demandeth the said prohibition: and in case the said suggestion, by two honest and sufficient witnesses at the least, be not proved true in the court where the said prohibition shall be so granted, within six months next following after the said prohibition shall be so granted and awarded, that then the party that is letted or hindered, of his or their suit in the ecclesiastical court, by such prohibition, shall upon his or their request and suit, without delay, have a consultation granted in the same case, in the court where the said prohibition was granted, and shall also recover double costs and damages against the party that so pursued the said prohibition, the said costs and damages to be assigned or assessed by the court where the said consultation shall be so granted, for which costs and damages, the party to whom they shall be awarded, may have an action of debt, by bill, plaint, or information in any of the King's courts of record, wherein the defendant shall not wage his

his or their law, nor have any effoigne or protection allowed or admitted.

S. 15. " Provided always, and be it enacted by the authority aforesaid, that this act, or any thing therein contained, shall not extend to give any minister or judge ecclesiastical, any jurisdiction to hold plea of any matter, cause or thing, being contrary or repugnant to or against the effect, intent, or meaning of the statute of *Westminster* second, the fifth chapter, the statutes of *Articuli cleri*, *circumspecte agatis*: *si qua sedua*, the treatise *de regia prohibitione*, ne against the statute of *anno primo Edwardi tertii*, the tenth chapter, or any of them, ne yet hold plea in any matter whereof the King's court of right ought to have jurisdiction: any thing therein contained to the contrary in any wise notwithstanding.

Of what things a judge ecclesiastical shall not hold plea.

13 Ed. 1. 5.
9 Ed. 2. 13 Ed.
1 45. Ed. 3. 3.
1 Ed. 3. 11.
2 Inst. 663.
3 Burn's Eccles.
Law, 497.

S. 16. " Provided nevertheless, where heretofore such a custom hath been in many parts of *Wales*, that of such cattel and other goods, as hath been given with the marriage of any person, their tithes have been exacted and levied by the parsons and curates in those parts: which custom being dissonant from any part of this realm, as it seemed when the said country of *Wales* was through civil dissention unculted, for want of other sufficient profits that might otherwise grow to the curates and ministers there, to have been for that time tolerable: so now the country being well manured and husbanded, and the tithe is duly paid there, of corn, hay, wool and cheese, and of other increase of all manner of cattel, as it is commonly in all other parts of this realm, the same custom seems to be grievous and unreasonable, specially where the benefices are else sufficient for the finding of the said ministers and curates:

No tithes of
marriage goods
shall be paid in
Wales, &c.

that it be therefore enacted by the authority afore-
said, that from and after the first day of *May* next
coming, no such tithes of marriage goods be exacted
or required of any person within the said dominion
of *Wales*, or marches of the same: any thing in this
act contained, or any other act, custom, prescrip-
tion, had or made to the contrary hereof notwith-
standing. *Cok. Inst.* 159. a.

See *Anon. T.* 26 *Eliz. ante*, p. 8.

Driver and Man. E. 13 *Car. II. ante*, p. 32.

Bræmer and Thornton, M. 13 *Car. II. ante*, p. 33.

Black and Elliot, M. 25 *Car. II. ante*, 45.

Anon. M. 9 *Wil. III. ante*, p. 86.

Pugh and Pascall, T. 11 *Wil. III. ante*, p. 93.

Chamberlain and Newte, H. 5 *Anne. ante*, p. 106.

Kelynack and Gwavas, H. 3 *Geo. II. ante*, p. 278.

Corporation of Bury and Evans, E. 12 *Geo. II. ante*, p. 364.

ELIZABETH.

13 ELIZ. CHAP. 10.

* *Fraudulent Deeds made by spiritual Persons to de-
feat their Successors of Remedy for Dilapidati-
ons, shall be void, &c.*

Wrongs and
frauds practised
by divers ecclesi-
astical persons.

Sec. 1. “ **W**HERE divers and sundry ecclesi-
astical persons of this realm, be-
ing endowed and possessed of ancient palaces, man-

* This statute is wholly disabling. 2 *B. E. L.* 358.

Note; here is no appearance of this statute being temporary; never-
theless it is continued as temporary by stat. 1 *Jac. I.* chap. 15, and fur-
ther by stat. 21 *Jac. I.* chap. 23. and not further indefinitely (as a great
many other statutes were) by 16 stat. *Car. I.* chap. 4. so that, upon the
whole, there may perhaps be some doubt, whether this statute is now in
force. 2 *B. E. L.* 132.

tion

tion-houses, and other edifices and buildings belonging to their ecclesiastical benefices or livings, have of late years not only suffered the same for want of due reparations partly to run to great ruin and decay, and in some part utterly to fall down to the ground, converting the timber, lead, and stones to their own benefit and commodity; but also have made deeds of gift and colourable alienations, and other conveyances of like effect, of their goods and chattels in their life time, to the intent, and of purpose after their deaths to defeat and defraud their successors of such just actions and remedies, as otherwise they might and should have had for the same, against their executors or administrators of their goods, by the laws ecclesiastical of this realm, to the great defacing of the state ecclesiastical, and intolerable charges of their successors, and evil president and example for others, if speedy remedy be not provided.

§. 2. "Be it therefore enacted by the Queen's most excellent Majesty, the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that if any archbishop, bishop, dean, archdeacon, provost, treasurer, chaunter, chancellor, prebendary, or any other having any dignity or office in any cathedral or collegiate church within this realm: or if any parson, vicar, or other incumbent of any ecclesiastical living, whereunto do belong any house or houses, or other buildings, which by law or custom he is bound to keep and maintain in reparation, do from henceforth make any deed or deeds of gift or alienation, or other like conveyances of his moveable goods or chattles, to the intent and purpose aforesaid: that then the successor and successors of him that shall make such deed or deeds of gift or alienation, shall
and

How the successor shall have remedy where the predecessor doth make a fraudulent deed to defeat him for dilapidations.
Stat. 14 *Elix.*
chap. 21. *sect.* 17.

and may commence suit, and have such remedy in any courts ecclesiastical of this realm, competent for the matter against him, or them, to whom such deed or deeds of gift or alienation shall be so made, for the amendment and reparation, of so much of the said dilapidations and decays, or just recompence for the same, as hath happened by his fact or default, in such sort as he might, should, or ought lawfully to have, if he or they, to whom such deed or deeds of gift or alienation shall be so made, were executor or executors of the testament and last will of him that made such deed or deeds of gift or alienation, or were administrator or administrators of his goods or chattels: any law, custom, or other thing to the contrary in any wise notwithstanding.

What conveyances, and for what time spiritual persons may make of their lands, tithes, &c.
Stat. 14 Eliz.
chap. 11.
sect. 17.
Stat. 18, Eliz.
chap. 10.

S. 3. " And for that long and unreasonable leases made by colleges, deans and chapters, parsons, vicars, and other having spiritual promotions, be the chiefest causes of the dilapidations and the decay of all spiritual livings and hospitality, and the utter impoverishing of all successors incumbents in the same: be it enacted by the authority aforesaid, that from henceforth all leases, gifts, grants, scotements, conveyances, or * estates, to be made, had, done, or suffered, by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or guardian of any hospital, parson, vicar, or any other having any spiritual or ecclesiastical living, or any houses, lands, tithes, tenements, or other hereditaments, being any parcel of the possessions of any such college, cathedral church, chapter, hospital, parsonage, vicarage, or other spiritual promotion, or any ways appertaining or belonging to the same, or any of them, to any person

* Dyer, 356. Coke, l. 2. f. 46. Lib. 6. f. 37. Lib. 11. f. 67. Co. Inst. 44. a. b.

or persons, bodies politic or corporate, (other than for the term of one and twenty years, or three lives from the time as any such lease or grant shall be made or granted, whereupon the accustomed yearly rent^a or more, shall be reserved and payable yearly during the said term) shall be utterly void, and of none effect, to all intents, constructions, and purposes: any law, custom, or usage to the contrary any ways notwithstanding.

S. 4. "Provided nevertheless, and be it enacted by the authority aforesaid, that this act nor any thing therein contained shall be taken or construed to make good any lease, or other grant to be made by any such college or collegiate church, within either or both the universities of *Oxford and Cambridge*, or elsewhere within the realm of *England*, for more years than are limited by the private statutes of the same college.

Terms affirmed by the private statute of any college in an university.

S. 5. "Provided always, that this act shall not extend to any lease hereafter to be made upon surrender of any lease heretofore made, or by reason of any covenant or condition contained in any lease heretofore made, and now continuing, so that the lease to be made do not contain more years than the residue of the years of the former lease now continuing shall be, at the time of such lease hereafter to be made, nor any less rent than is reserved in the said former lease. *Coke*, lib. 4. f. 120. lib. 5. f. 14. chap. 28." See *Cholmeley* and the Attorney General, under *Michaëlmas Term*, 8 *Geo. III. ante*, p. 561.

New leases made upon the surrender of old or former covenants.

Corporations aggregate might always have let long leases without any confirmation; and so might sole corporations with confirmation, until stat. 13 *Eliz.*

^a 6 *Co.* l. 3. f. 67. lib. 5. f. 166. lib. 2. 70.

chap. 10. was made, none but *bishops* were restrained by stat. 1 *Eliz.* chap. 19. but by stat. 13 *Eliz.* chap. 10. all other corporations, sole and aggregate, are put under the same restraints that bishops were. 2 *B. E. L.* 348.

By any master and fellows of any college, dean and chapter of any cathedral or cathedral church, means by the major part of such body corporate, 2 *B. E. L.* 348. in regard whereunto, all and every peculiar act, order, rule, and local statutes, made by the founder of any cathedral church, hospital, college, or other corporation, with the assent of the major part of the chapter, fellows, or brethren of such corporation, purporting, that if any one of such corporation should deny any lease, that then none should be granted, whereby the lease of the dean, warden, provost, master, president, other governor or ruler, with the assent of the major part of such cathedral church, &c. became hindered by any one or more being the less number (contrary to the course of the common law, whereby all leases granted by such dean, &c. of any cathedral church, &c. with the assent of the major part of the chapter of such corporation, shall be as effectual as if the residue of the whole number had assented) wherefore it is thereby enacted that such act, &c. shall be void. Stat. 33 *Hen. VIII.* chap. 27. But such major part are to attend in person and to be present together, at the executing such act, a dean can make no deputation, but to one of the chapter only; and therefore the confirmation of a lease made by the bishop, was adjudged ill, because the dean was not only not present, but acted by a proctor, who was a *stranger* to the chapter, and not of the body; besides the authority of the president, sub-dean, or the like, for the exercise of the decanal office, a distinct

tinēt proxy to one or more members of the chapter who may represent him in the passing of grants, confirmations, and other chapter acts, is necessary to make them good and valid in law; and this assent must be given by each member singly, and not in a confused and uncertain manner; and this must be when capitularly assembled in one certain place, and not a consent given by the members in several places and at several times; and the chapter seal being affixed to the confirmation of a lease by particular members only, and not by the corporation assembled in one place, and in a capitular manner, this confirmation was adjudged ill, because the act was not done *simul et semel*, at the same time and place as the law requires. *Dav. Rep.* 47, 48. 2 *B. E. L.* 349, 350. See Pref. Disc. to *Green's Spirit of the Bankrupt Laws*. XIV. *Stra.* 568. *Sol. Cas. of Evid.* 100. But if the dean and chapter be capitularly assembled in *any place*, their acts shall be good, though such assembly is not held in the chapter house; and the act of the dean and major part of the chapter, so assembled, is properly the act of the corporation, although the rest do not agree, or are voluntarily absent. *Gibf. Cod. Jur. Eccles. Angl.* 744. *Dav. Rep.* 42.

Master and fellows of any college, includes all colleges, by what name soever incorporated, and of what nature soever the foundations be, ecclesiastical, temporal, or mixed, the statute being construed most largely and beneficially against long and unreasonable leases. 11 *Rep.* 76. and for the same reason, though it is said *dean and chapter of any cathedral or collegiate church*, it extendeth to the chapters, where there are no deans. *Gibf. Cod. Jur. Eccles. Angl.* 736. In like manner, *master or guardian of any hospital*, shall extend to all kinds of hospitals, be the same incorporated

rated by any other name; or be it a sole corporation, or a corporation aggregate. 11 Rep. 76.

Every bond and covenant for renewing or making of any lease or leases contrary to the true intent of the said act of 13 *Eliz.* chap. 10. sect. 3. shall be utterly void. Stat. 18 *Eliz.* chap. 11. sect. 3. See 3 *Bulstr.* 202. *Gibf. Cod. Jur. Eccles. Angl.* 737, 738.

All leases for twenty-one years or three lives, made by any ecclesiastical, spiritual, collegiate or other person, having, a spiritual or ecclesiastical living, of their ecclesiastical, spiritual or collegiate lands, tenements, or hereditaments, of which any former lease for years is in being, the same not expiring (being made long before the expiration thereof) or to be surrendered or ended within three years next after the making any such new lease, contrary to the true meaning and intent of the said statute [13 *Eliz.* chap. 10. sect. 3.] shall be void, frustrate, and of none effect. 18 *Eliz.* chap. 11. sect. 2.

Stat. 13 *Eliz.* chap. 10. sect. 3. shall not extend to any lease to be made of the manor of *Fisfield*, in the county of *Berks*, by St. *John's* college, *Oxford*, to the heirs male of Sir *Thomas White*, founder of the said college. Stat. 18 *Eliz.* chap. 11. sect. 5, 6.

Although ecclesiastical corporations aggregate are, not within stat. 32 *Hen. VIII.* chap. 28. yet in that statute a pattern for leases by them made, in many things which are not here specified; and as to leases made by sole corporations, according to the statute of 13 *Eliz.* they are not good without confirmation, unless they be also made according to the limitations of the

the said statute of 32 Hen. VIII. *Gibf. Cod. Jur. Ecclef. Angl.* 736.

If a corporation aggregate makes a lease not warranted by this stat. of 13 Eliz. chap. 10. such lease is void against themselves; but nevertheless if a sole corporation maketh such lease, it shall bind himself, though it be void against his successor. *Gibf. Cod. Jur. Ecclef. Angl.* 737.

13 ELIZ. CHAP. * 20.

How long Leases made of Ecclesiastical Livings with Cure, may stand in Force, and how they may be avoided.

SECT. 1. "THAT the livings appointed for ecclesiastical ministers may not by corrupt and indirect dealings be transferred to other uses: be it enacted by the authority of this present parliament, that no lease after the fifteenth day of May next following the beginning of this parliament, to be made of any benefice or ecclesiastical promotion, with cure, or any part thereof, and not being impropriated, shall endure any longer than while the lessor shall be ordinarily resident, and serving the cure of such benefice without absence above four-score days in any one year, but that every such lease, *† so soon as it, or any part thereof, shall come to any possession or use above forbidden*, or immediately upon such absence, shall cease and be void, and the incumbent so offending, shall for the same lose one

How long the lease of a benefice shall endure, Co. pla. 205.

* This act is perpetuated by stat 3 Car. I. chap. 4. sect. 1.

† *Dyer* 372. Cr. *Eliz.* 123.

‡ Note, that the words distinguished in *italicks* are repealed by stat. 14 *Eliz.* chap. 11. sect. 14. See *post* 1267.

No benefice with cure shall be charged with a pension.

year's profit of his said benefice, to be distributed by the ordinary among the poor of the parish. And that all chargings of such benefices with cure, hereafter with any pension, or with any profit out of the same to be yielded or taken, hereafter to be made, other than rents to be reserved upon leases hereafter to be made, according to the meaning of this act, shall be utterly void.

The parson's lease to his curate.

S. 2. " Provided, that every parson by the laws of this realm allowed to have two benefices, may demise the one of them, upon which he shall not then be most ordinarily resident, to his curate only, that shall there serve the cure for him : but such lease shall endure no longer than during such curate's residence, without absence above forty days in any one year."

Where leases are made void by this statute, there all bonds, covenants, and judgments for enjoying such leases, are made void by this statute ; but if the leases be void at common law, as by death, resignation or deprivation, and not by the above statute, there bonds and covenants for the enjoying such leases are not made void by either stat. 14 *Eliz.* chap. 11. or 43 *Eliz.* chap. 9. See *Cro. Eliz.* 123. *Gibbs. Cod. Jur. Eccles. Angl.* 740. 2 *Burn's Eccles. Law.* 353.

See stat. 18 *Eliz.* chap. 11. 2 B. E. L. 65. 3 B. E. L. 283. *Mills and Etheridge*, Hilary Term, 11 Geo. I. ante, p. 218. *Quilter and Muffendine*, Easter Term, 12 Geo. I. ante, p. 225. *Quilter and Lowndes*, Trinity Term, 12 Geo. I. ante, 230. *Cholmeley and the Attorney General*, Michaelmas Term, 8 Geo. III. ante, p. 565.

14 ELIZ. CHAP. 11.

* *Several Statutes made in the Reign of King Henry the Eighth, King Edward the Sixth, and Queen Elizabeth, revived, continued, and explained, &c.*

Stat. 14. “ **P**ROVIDED also, and be it enacted, that these words (so soon as it, or any part thereof, shall come to any possession or use above forbidden, or) which words are contained in the said statute of 13 *Eliz* chap. 20. *stat. 1.* touching leases of benefices, and other ecclesiastical livings with cure, shall not be revived by this act, but remain discontinued, and shall from henceforth be omitted out of the said act: any thing in the said act, or in this act to the contrary notwithstanding.

Certain words contained in the stat. of 13 *Eliz* chap. 20. discontinued.

S. 15. “ And where sundry evil disposed persons have defrauded the true meaning of the last mentioned statute, made in the said thirteenth year by bonds and covenants of suffering other persons to enjoy ecclesiastical livings, and the fruits thereof, for that such bonds and covenants are not in law taken to be leases, although indeed they amount to as much: be it therefore enacted, that all bonds, contracts, promises and covenants, hereafter to be made for suffering or permitting any person to enjoy any benefice, or ecclesiastical promotion with cure, or to take profits or fruits thereof, other than such bonds

Co. pla. fo. 205. Bonds and covenants for the enjoying of leases, shall be void. 43 *Eliz*, chap. 9.

* A singular instance this of the impropriety of the title to an act of parliament, for it hardly relates to any part of the act in force at this day; we make the observation, because, without it, the reader must certainly conclude, that we had mistaken the title to this act in 1700.

and covenants as shall be made for assurance of any lease heretofore made, shall be to all intents and purposes adjudged of such force and validity, and not otherwise, as leases by the same persons made of such benefices and ecclesiastical promotions with cure.

Leases made by
curates of benefices
with cure.

S. 16. " And be it further declared and enacted, that all leases, bonds, promises, and covenants, of and concerning benefices and ecclesiastical livings with cure, to be made by any curate, shall be of no other, nor better force, validity, or continuance, than if the same had been made by the beneficed person himself, that demised, or shall demise the same to any such curate.

13 Eliz. chap. 10.

Leases made by
spiritual persons
of houses in cities
or corporate
towns.

S. 17. " And where in one other act made in the said thirteenth year, entituled, *An act against fraudulent gifts, to the intent to defeat dilapidations of ecclesiastical livings, and for leases to be granted by collegiate churches*, there is one branch to avoid certain leases to be made by masters and fellows of colleges, deans, and chapters of cathedral or collegiate churches, masters or guardians of any hospital, or by any parson, vicar, or any other having any spiritual or ecclesiastical living: be it enacted, that the said branch, nor any thing therein contained, shall not extend to any grant, assurance, or lease of any houses belonging to any the persons, or bodies politic or corporate aforesaid, nor to any grounds to such houses appertaining, which houses be situate in any city, borough, town corporate, or market town, or the suburbs of any of them; but that all such houses and grounds may be granted, demised, and assured, as by the laws of this realm, and the several statutes of the said colleges, cathedral churches and hospitals they lawfully might have been before the making of the

the said statute, or lawfully might be, if the said statute were not, so alway that such house be not the capital or dwelling-house used for the habitation of the persons above said, nor have ground to the same belonging, above the quantity of ten acres : any thing in the said act to the contrary notwithstanding.

S. 18. " And be it further enacted, that all sums of money hereafter to be recovered, for, or in name of dilapidations, by sentence, composition, or otherwise, shall, within two years after such receipt, be truly employed upon the buildings and reparations, in respect whereof such money for dilapidations shall be paid, on pain that every person so receiving, and not employed as aforesaid, shall forfeit double as much as shall be by him received, and not employed, the which forfeiture shall be to the use of the Queen's Majesty, her heirs and successors.

Money recovered for dilapidations shall be employed in repair of the same houses.

S. 19. " Provided alway, and be it enacted, that no lease shall be permitted to be made by force of this act in reversion, nor without reserving the accustomed yearly rent at the least, nor without charging the lessee with the reparation, nor for longer term than forty years at the most : nor any houses shall be permitted to be aliened, unless that, in recompence thereof, there shall be afore, with, or presently after such alienation, good, lawful, and sufficient assurance made in fee-simple absolutely to such colleges, houses, bodies politic or corporate, and their successors, of lands of as good value, and of as great yearly value at the least as so shall be aliened : any statute to the contrary notwithstanding."

Certain observations in the leases to be made by spiritual persons according to this statute. No college shall alien any house, without present and sufficient satisfaction.

But section 17 of this statute referring only to such persons or bodies corporate, as were specified

in statute 13 *Eliz.* chap. 10. does not extend unto bishops, and yet it hath often been declared to be a general law; but 1 *Eliz.* chap. 19. remaineth as it did; and bishops have no power to let houses otherwise than according to the said statute of 1 *Eliz.* chap. 19. nor may they make exchanges for any recompence, or consideration. *Gibf. Cod. Jur. Eccles. Angl.* 738.

Though, by section 19, a lease made by the dean and chapter of *St. Paul's*, of a house for forty years, years, the same house being then in lease for ten years to a stranger, was adjudged, without argument, not to be a good lease, because, by the express words of this clause of the act, no lease of any such houses shall be made *in reversion*; yet if both leases had been to the same person, the lease in question had been good. *Gibf. Cod. Jur. Eccles. Angl.* 739. *Cro. Eliz.* 564.

See *Gibf. Cod. Jur. Eccles. Angl.* 754. *Cbolsmeley* and the *Attorney General*, *Michaelmas Term*, 8 *Geo.* III. *ante*, p. 565.

43 ELIZ. CHAP. 9.

* *Several Statutes in the Reigns of King Henry the Eighth, King Edward the Sixth, and Queen Elizabeth, revived and continued.*

SECT. 8. “ **A**LL judgments hereafter to be had, for the intent to have and enjoy any lease, contrary to the said † statutes; or any of them,

* See our observation on the title to the last act.

† *Viz.* Stat. 13 *Eliz.* chap. 20. 14 *Eliz.* chap. 11. 18 *Eliz.* chap. 11. See *Cbolsmeley* and the *Attorney General*, *Michaelmas Term*, 8 *Geo.* III. *ante*, p. 565.

shall

shall be deemed void, in such sort as bonds and covenants are appointed to be void, which are made for that purpose."

C H A R L E S II.

22 & 23 C A R. II. C H A P. 15.

An Act for the better Settlement of the Maintenance of the Parsons, Vicars, and Curates in the Parishes of the City of London, burnt by the late dreadful Fire there.

SECT. 1. " **W** H E R E A S the tithes in the city of *London* were levied and paid with great inequality, and are since the late dreadful fire there, in the rebuilding of the same, by taking away of some houses, altering the foundations of many, and the new erecting of others so disordered; that in case they should not for the time to come be reduced to a certainty, many controversies and suits of law might thence arise: be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons in this present parliament assembled, and by the authority of the same, that the annual certain tithes of all and every parish and parishes within the said city of *London*, and the liberties thereof, whose churches have been demolished, or in part consumed by the late fire, and which said parishes, by virtue of an act of this present parliament, intituled, *An additional act for the rebuilding of the city of London, uniting of parishes, and rebuilding of the cathedral and parochial churches within the said city*, remain and continue single, as heretofore they were, or are by the said act annexed or united into one parish respectively, shall

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shall be as followeth (that is to say) the annual certain tithes, or sum of money in lieu of tithes.

Of the parish of <i>Alhallows Lumbardestreet</i> ;	£.	s.
one hundred and ten pounds	—	110
Of Saint <i>Bartholemew Exchange</i> ; one hundred pounds	—	100
Of Saint <i>Bridget</i> , alias <i>Brides</i> ; one hundred and twenty pounds	—	120
Of Saint <i>Bennet Finck</i> ; one hundred pounds	—	100
Of Saint <i>Michael Crooked-lane</i> ; one hundred pounds	—	100
Of Saint <i>Christopher</i> ; one hundred and twenty pounds	—	120
Of Saint <i>Dionis Backeburch</i> ; one hundred and twenty pounds	—	120
Of Saint <i>Dunstan in the East</i> ; two hundred pounds	—	200
Of Saint <i>James Garlick Hythe</i> ; one hundred pounds	—	100
Of Saint <i>Michael Cornhill</i> ; one hundred and forty pounds	—	140
Of Saint <i>Michael Bassyshaw</i> ; one hundred thirty and two pounds and eleven shillings	—	132 11
Of Saint <i>Mary Abchurch</i> , and Saint <i>Lawrence Pountney</i> ; one hundred and twenty pounds	—	120
Of Saint <i>Mary Aldermary</i> , and Saint <i>Thomas Apostles</i> ; one hundred and fifty pounds	—	150
Of Saint <i>Mary le Bow</i> , Saint <i>Pancras Seper-lane</i> , and <i>Alhallows, Honey-lane</i> ; two hundred pounds	—	200
Of Saint <i>Mildred Poultry</i> , and Saint <i>Mary Cole-church</i> ; one hundred and seventy pounds	—	170

Of

Of Saint <i>Michael Woodstreet</i> , and Saint <i>Mary Staining</i> ; one hundred pounds	£. 100
Of Saint <i>Mildred Breadstreet</i> , and Saint <i>Margaret Moses</i> ; one hundred thirty pounds	130
Of Saint <i>Michael Queenhithe</i> , and <i>Trinity</i> ; one hundred and sixty pounds	160
Of Saint <i>Magdalen Old Fishstreet</i> and Saint <i>Gregory</i> ; one hundred and twenty pounds	120
Of Saint <i>Lawrence Jewry</i> , and Saint <i>Magdalen Milkstreet</i> ; one hundred and twenty pounds	120
Of Saint <i>Magnus</i> and Saint <i>Margaret New-Fishstreet</i> ; one hundred and seventy pounds.	170
Of Saint <i>Michael Royal</i> , and Saint <i>Martin Vintry</i> ; one hundred and forty pounds	140
Of Saint <i>Mathew Fridaystreet</i> , and Saint <i>Peter Cheap</i> ; one hundred and fifty pounds.	150
Of Saint <i>Margaret Pattons</i> , and Saint <i>Gabriel Fenchurch</i> ; one hundred and twenty pounds	120
Of Saint <i>Mary at Hill</i> , and Saint <i>Andrew Hubbard</i> ; two hundred pounds	200
Of Saint <i>Mary Woolnoth</i> , and Saint <i>Mary Woolchurch</i> ; one hundred and sixty pounds	160
Of Saint <i>Clement Eastcheap</i> , and Saint <i>Martin Orgars</i> : one hundred and forty pounds	140
Of Saint <i>Margaret Lotbbury</i> ; one hundred pounds	100
Of Saint <i>Mary Aldermanbury</i> ; one hundred and fifty pounds	150
Of Saint <i>Martin Ludgate</i> ; one hundred and sixty pounds	160

Of

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Of Saint <i>Peter Cornhill</i> ; one hundred and ten pounds	£. 110
Of Saint <i>Stephen Colemanstreet</i> ; one hundred and ten pounds	110
Of Saint <i>Sepulchre</i> ; two hundred pounds	200
Of <i>Alballows</i> , <i>Breadstreet</i> , and Saint <i>John</i> <i>Evangelist</i> ; one hundred and forty pounds	140
Of <i>Alballows</i> the great, and <i>Alballows</i> the less; two hundred pounds	200
Of Saint <i>Alban Woodstreet</i> , and Saint <i>Olaves Silverstreet</i> ; one hundred and seventy pounds	170
Of Saint <i>Anne</i> and <i>Agnes</i> , and Saint <i>John</i> <i>Zachary</i> ; one hundred and forty pounds	140
Of Saint <i>Augustin</i> and Saint <i>Faith</i> ; one hundred and seventy-two pounds	172
Of Saint <i>Andrew Wardrobe</i> , and Saint <i>Anne</i> <i>Blackfryars</i> ; one hundred and forty pounds	140
Of Saint <i>Antholin</i> and Saint <i>John Baptist</i> ; one hundred and twenty pounds	120
Of Saint <i>Bennet Gracechurch</i> , and Saint <i>Leonard Eastcheap</i> ; one hundred and forty pounds	140
Of Saint <i>Bennet Paul's Wharf</i> , and Saint <i>Peter Paul's Wharf</i> ; one hundred pounds	100
Of <i>Christ Church</i> and Saint <i>Leonard Foster</i> <i>lane</i> ; two hundred pounds	
Of Saint <i>Edmond the King</i> , and Saint <i>Ni-</i> <i>cholas Acons</i> ; one hundred and eighty pounds	180
Of Saint <i>George Botolph-lane</i> , and Saint <i>Bot-</i> <i>tolph Billingsgate</i> ; one hundred and eighty pounds	180

Of

Of Saint <i>Mary Somerset</i> , and Saint <i>Mary Mounthaw</i> ; one hundred and ten pounds	£.	110
Of Saint <i>Nicholas Coleabbey</i> , and Saint <i>Nicholas Olaves</i> ; one hundred and thirty pounds		130
Of Saint <i>Olave Jury</i> , and Saint <i>Martin Ironmonger-lane</i> ; one hundred and twenty pounds		120
Of Saint <i>Stephen Walbrook</i> , and Saint <i>Bennet Sheerhogg</i> ; one hundred pounds		100
Of Saint <i>Swythin</i> , and Saint <i>Mary Bothaw</i> one hundred and forty pounds		140
Of Saint <i>Vedaft</i> , alias <i>Foflers</i> , and Saint <i>Michael Quern</i> ; one hundred and fixty pounds		160

S. 3. "Which respective sums of money to be paid in lieu of tithes within the said respective parishes, and assessed as herein after is directed, shall be, and continue to be esteemed, deemed, and taken to all intents and purposes, to be the respective certain annual maintenance (over and above glebes and perquisites, gifts, and bequests to the respective parson, vicar, and curate of any parish for the time being, or to his or their respective successors, or to other persons for his or their use) of the said respective parsons, vicars, and curates, who shall be legally instituted, inducted, and admitted into the respective parishes aforesaid.

S. 4. "And that the said several sums of money for tithes, may be more equally assessed upon the several houses, buildings, and all other hereditaments whatsoever, within all the said respective parishes : be it enacted by the authority aforesaid, that the alderman of such respective ward or wards within

within the said city, wherein any of the said parishes respectively lie, and his or their deputy or deputies, and the common-council-men of such respective ward or wards, with the church-wardens, and one for more of the parishioners of such respective parish, wherein the maintenance aforesaid is respectively to be assessed, to be nominated by such respective alderman, deputy, common-council-men and church-wardens, or any five of them, whereof the aldermen or his deputy to be one, shall at some convenient and seasonable time before the twentieth day of *May*, in the year of our Lord God, one thousand six hundred and seventy-one, assemble and meet together in some convenient place within every of the respective parishes, in such respective ward, wherein the maintenance aforesaid is to be assessed, and they, or the major part of them so assembled, shall proportionably assess upon all houses, shops, ware-houses, and cellars, wharfs, keys, cranes, water-houses (which water-houses shall pay in their respective parishes where they stand, and not elsewhere) and tofts of ground (remaining unbuilt) and all other hereditaments whatsoever (except parsonage and vicarage houses) the whole respective sum by this act appointed, or so much of it as is more than what each impropiator is by this act enjoined respectively to allow, in the most equal way that the said assessors, according to the best of their judgments can make it; which said assessments shall be made and finished before the four and twentieth day of *July* then next ensuing.

3. 5. " And be it further enacted by the authority aforesaid, that if any variance or doubt shall happen to arise about any sum so assessed, as aforesaid, or that any parishioner or parishioners, or
owner

owner or owners of any house, shop, ware-house, or cellar, wharf, key, crane, water-house, toft of ground, or other hereditament within any of the said parishes, shall find himself or themselves aggrieved by the assessing of any sum or sums of money, in manner and form aforesaid : that then, upon complaint made by the party or parties aggrieved, to the lord mayor and court of aldermen of the said city, within fourteen days after notice given to the party or parties assessed, of such assessment made, the said lord mayor and court of aldermen summoning as well the party or parties aggrieved, as the alderman, and such others as made the said assessment, shall hear and determine the same in a summary way, and the judgment, by them given shall be final, and without appeal.

S. 6. " Provided always, and be it enacted, that any assessment or rate to be made or laid by virtue of this act, shall or may in all or any the parishes aforesaid, in like manner, be reviewed, or altered, or laid again within three months after the twenty-fourth day of *June*, one thousand six hundred and seventy-four, according to the aforesaid rules, and any such assessment, or rate, shall or may be again reviewed, or re-assessed within three months after the twenty-fourth day of *June*, in the year of our Lord; one thousand six hundred eighty-one ; and that all and every such new assessment and rate shall be liable to the like appeals, as aforesaid, and shall be collected, levied and paid as any other assessment or rate mentioned in this act may or ought to be.

S. 7. " And if the said alderman, deputy, common-council-men, and parishioner or parishioners so appointed, as aforesaid, shall, after summons and request

request made in that behalf unto them, by the lord mayor and court of aldermen, or the incumbent or incumbents of any of the said respective parish or parishes, refuse and neglect to meet and make such assessments as aforesaid, then it shall and may be lawful, to and for such person or persons as shall be thereunto authorized and required by the said lord mayor and court of aldermen, to make such assessments, as by the said aldermen, deputy, common-council-men, church-wardens, parishioner or parishioners aforesaid, should or ought to have been made.

S. 8. " And be it further enacted by the authority aforesaid, that the said assessors within ten days after such assessments made, and the respective appeals (if any be) determined, shall make three transcripts thereof in parchment, containing the respective sums to be payable or appointed to be paid out of all and every the premises within such respective parish, and subscribe the same under their hands, and within twenty days after such subscription as aforesaid, one of the said transcripts shall be returned to the lord mayor of the city of *London*, to be kept and preserved by the said lord mayor, in and among the records of the said city, for a perpetual memorial thereof; and another of the said transcripts shall be returned into the registry of the Lord Bishop of *London*, to be kept and preserved, as aforesaid; and the other of the said transcripts shall remain and be kept in the vestry of such respective parish, for a perpetual memorial, as aforesaid.

S. 9. " And for the surer and better payment of the said respective sums of money so to be assessed and taxed towards the raising of the said maintenance of the respective parsons, vicars and curates of the said respective parishes, as aforesaid, be it further enacted by the authority aforesaid, that all and every
such

such respective sum and sums of money so to be assessed and taxed, as aforesaid, towards the raising of the said maintenance of the said respective parsons, vicars and curates of the said respective parishes, shall be paid to the said respective parsons, vicars and curates, and their successors respectively, at the four most usual feasts (that is to say) at the annunciation of the blessed virgin *Mary*, the nativity of Saint *John Baptist*, the feast of Saint *Michael* the archangel, and the nativity of our blessed Saviour, or within fourteen days after each of the feasts aforesaid, by equal payments; the respective payments thereof to begin and commence only from such time and times as the incumbent or incumbents of such respective parish shall begin to officiate or preach as incumbent or parson in the respective church belonging to such respective parish, or in some other convenient place or places in such respective parish or parishes, to be nominated or appointed by the Lord Bishop of *London* for the time being, or by the Archbishop of *Canterbury*, in any place within his peculiars.

S. 10. "And in any parish or parishes, where any impropriations be, be it enacted by the authority aforesaid, that all and every the impropiator or impropiators of any of the said parishes, shall pay and allow, what really, and *bona fide*, they have used, and ought to pay and satisfy to the respective incumbent of such respective parish, at any time before the said late fire, and the same shall be esteemed and computed as part of the maintenance of such incumbent; notwithstanding this act, or any clause or matter, or thing therein contained.

S. 11. "And be it further enacted by the authority aforesaid, that if any the inhabitants in any the
respective

respective parish or parishes, as aforesaid, shall or do refuse or neglect to pay to the respective incumbents aforesaid, of any of the said respective parishes, any sum or sums of money to him respectively payable, or appointed to be paid by this act, or any part thereof, contrary to the true intent and meaning of this act (being lawfully demanded at the house or houses, wharf, key, crane, cellar, or other premises, whereout the same is payable) that then it shall and may be lawful to and for the lord mayor of the city of *London* for the time being, upon oath to be made before him, of such refusal or neglect, to give and grant out warrants for the officer or person appointed to collect the same, with the assistance of a constable in the day-time, to levy the same tithes or sums of money so due, and in arrear, and unpaid, by distress and sale of the goods of the party or parties so refusing or neglecting to pay; restoring to the owner or owners, the overplus of such goods, over and above the said arrears of the said monies so due and unpaid, and the reasonable charges of making such distress, which he is to deduct out of the monies raised by sale of such goods.

S. 12. " Provided always, and be it enacted, that in case the lord mayor, or court of aldermen shall refuse or neglect to execute any of the respective powers to them by this act granted, or to perform all and every such thing, relating either to the assessing or levying of the respective sums aforesaid, as they are by this act authorized and required to perform, that then it shall and may be lawful for the lord chancellor, or lord keeper of the great seal of *England* for the time being, or any two or more more of the barons of his Majesty's court of *Exchequer*,

thequer, by warrant or warrants under his or their respective hands and seals, to do and perform what the said lord mayor and court of aldermen, according to the true intent or meaning of this present act, might or ought to have done, and by such warrant, either to empower any person or persons to make the respective assessments, as aforesaid, or to authorize the respective officers or persons appointed to collect the sums aforesaid, to levy the same by distress and sale of the goods of any person or persons that shall refuse or neglect to pay the same in manner and form aforesaid.

§ 13. " Provided always, and be it enacted, that where any of the parishes within the said city, have since the late fire, by death or otherwise, become vacant, the surviving or remaining incumbent of the other parish thereto united, or therewith consolidated, shall have and enjoy, and have like remedy to recover the tithes hereby settled, to be paid, as if he had been actually presented, admitted, instituted, and inducted into both the said parishes, since the union and consolidation thereof.

§ 14. " Provided always, that no court or judge ecclesiastical or temporal, shall hold plea of, or for any the sum or sums of money due, and owing, or to be paid by virtue of this act, or any part thereof, other than the persons hereby authorized to have cognizance thereof: nor shall it be lawful, to or for any parson, vicar, curate, or incumbent, to convent or sue any person or persons assessed, as aforesaid, and refusing or neglecting to pay the same in any court or courts, or before any judge or judges, other than what are authorized and appointed by this

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act, for the hearings, and determining of the same, in manner aforesaid.

S. 15. " Provided always, that it shall and may be lawful, to and for the warden and *minor* canons of Saint Paul's church London, parson and proprietors of the rectory of the parish of Saint Gregory aforesaid, to receive and enjoy, all tithes, oblations, and duties arising or growing due within the said parish, in as large and beneficial manner as formerly they have, or lawfully might have done; any thing herein to the contrary notwithstanding.

See *Savage and Wood*, their case, *Michaëmas Term*, 12 *Anne*, ante, p. 440. *Coxall's case* *Easter Term*, 22 *Geo. II.* ante, p. 439.

WILLIAM the THIRD.

7 & 8 WIL. III. CHAP 34.

An Act, that the solemn Affirmation and Declaration of the People called Quakers, shall be accepted, instead of an Oath, in the usual Form.

SECT. 3. " AND be it further enacted by the authority aforesaid, that if any quaker, making such solemn affirmation or declaration, shall be lawfully convicted, wilfully, falsely, and corruptly to have affirmed or declared any matter or thing, which, if the same had been in the usual form, would have amounted to wilful and corrupt

* We may make almost the same observation on the title to this act, as we did on that to stat. 24 *Eliz.* chap. 11. for nothing concerning tithes is mentioned in it. *N. B.* This act is perpetuated by stat. 1 *Geo. I.* sess. 2, chap. 6.

perjury, every such quaker so offending, shall incur the same penalties and forfeitures as by the laws and statutes of this realm are enacted against persons convicted of wilful and corrupt perjury.

S. 4. " And whereas, by reason of a pretended scruple of conscience, quakers do refuse to pay tithes and church rates, be it enacted by the authority aforesaid, that where any quaker shall refuse to pay, or compound for his great or small tithes, or to pay any church rates, it shall and may be lawful, to and for the two next justices of peace of the same county (other than such justice of the peace as is patron of the church or chapel, whence the said tithes do or shall arise, or any ways interested in the said tithes) upon the complaint of any parson, vicar, farmer or proprietor of tithes, churchwarden or church-wardens, who ought to have, receive or collect the same, by warrant under their hands and seals, to convene before them such quaker or quakers neglecting or refusing to pay or compound for the same, and to examine upon oath, which oath the said justices are hereby empowered to administer, or in such manner as by this act is provided, the truth and justice of the said complaint, and to ascertain and state what is due and payable by such quaker or quakers to the party or parties complaining, and by order under their hands and seals to direct and appoint the payment thereof, so as the sum ordered, as aforesaid, do not exceed ten pounds; and upon refusal by such quaker or quakers to pay according to such order, it shall and may be lawful, to and for any one of the said justices, by warrant under his hand and seal, to levy the money thereby ordered to be paid, by distress and sale of the goods of such offender, his executor or administrators, rendering

only the overplus to him, her, or them, necessary charges of disttaining being thereout first deducted and allowed by the said justice; and any person finding him, her, or themselves aggrieved by any judgment given by such two justices of the peace, shall and may appeal, to the next general quarter sessions to be held for the county, riding, city, liberty or town corporate; and the justices of the peace there present, or the major part of them, shall proceed finally to hear, and determine the matter, and to reverse the said judgment, if they shall see cause; and if the justices then present, or the major part of them, shall find cause to continue the judgment given by the first two justices of the peace, they shall then decree the same, by order of sessions, and shall also proceed to give such costs against the appellant, to be levied by distress and sale of the goods and chattels of the said appellant, as to them shall seem just and reasonable; and no proceedings or judgment had or to be had, by virtue of this act, shall be removed or superseded by any writ of *certiorari* or other writ, out of his Majesty's courts at *Westminster*, or any other court whatsoever, unless the title of such tithes shall be in question.

S. 5. "Provided always, that in case any such appeal be made, as aforesaid, no warrant of distress shall be granted, until after such appeal be determined."

It seemeth best not to make out, at least not to execute, the warrant of distress under this act, until after the next sessions. 4 B. J. P. 301.

Note again, here is no time limited for delivering the distress, nor charges allowed for the keeping of it; so that it may be sold immediately. *Id. ib.*

It

It is declared that stat. 27 *Geo.* II. chap. * 20. shall not extend to alter any provisions, relating to distresses to be made for the payment of tithes by the people called *quakers*, contained in the act of 7 & 8 *Will.* III. and 1 *Geo.* I. sess. 2. chap. 6. 3 *B. E. L.* 501. 4 *B. J. P.* 301.

Also it is observable, that the above mentioned act of parliament of 7 & 8 *Will.* III. limits the proceedings to the two *next* justices, (not interested) and the statute of 1 *Geo.* I. enlarges the same to any two justices (not interested) as to the complaint, summons, and order; but restrains the distress to the limitations in the act of 7 & 8. *Will.* III. that is, to one of the two *next* justices as aforesaid, which possibly may have been an oversight, for it may happen hereupon, that neither of the two justices who made the order, can enforce the execution of it by distress; to prevent which inconvenience, it may be proper that *one* at least of the justices complained to, be one of the two next justices not interested. 4 *B. J.* 301. See *Id.* 485.

Inaccuracy of the legislature noticed.

Remedy proposed.

See stat. 1 *Geo.* I. sess. 2. chap. 6. 1 *Bur. Rep.* 485. 3 *B. E. L.* 501, 502. 4 *B. J. P.* 301, 302. *Cunningh. Law of Tithes*, 300. *Anon. Michaelmas Term*, 29 *Car* II. ante, p. 53.

* This act directs in what manner distresses shall be made by justices of peace; and which in all other cases gives them power by their warrant of distress to order the goods distrained to be kept for a certain time not less than four days; and also gives power to the officers making the distresses, to deduct their reasonable charges.

QUEEN ANNE.

5 AN. CHAP. 24.

An Act for discharging small Livings from their First Fruits and Tenths, and all Arrears thereof.

SECT. 1. " **W**HEREAS pursuant to an act of parliament made in the second year of her Majesty's reign, intituled, *An act for the making more effectual her Majesty's gracious intentions for the augmentation of the maintenance of the poor clergy, by enabling her Majesty to grant in perpetuity the revenues of the first fruits and tenths, and also for enabling any other persons to make grants for the same purpose*, the Queen's most Excellent Majesty, by letters patents bearing date the third day of November, in the third year of her Majesty's reign, did make, appoint, nominate, constitute and establish certain persons and officers therein named, to be one body politick and corporate, by the name of *The bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy*; and did thereby give and grant to the said governors all the revenues of first fruits and yearly perpetual tenths of all dignities, offices, benefices and promotions spiritual whatsoever, payable to her Majesty, her heirs and successors, by virtue of an act of parliament made in the twenty-sixth year of the reign of King Henry the Eighth, or by virtue of an act of parliament made in the first year of the reign of the late Queen Elizabeth, for restitution of first fruits and tenths to the crown, or by virtue of any other act or acts of parliament whatsoever, and

all

2 & 3 An. chap.
11.

26 Hen. VIII.
chap. 3.
2 Edw. chap. 4.

all arrears of the said first fruits and tenths then due and undischarged (except as therein is excepted) to be applied and disposed of to and for the augmentation of the maintenance of such parsons, vicars, curates and ministers, officiating in any church or chapel within the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, where the liturgy and rights of the church of *England*, as now by law established, shall be used and observed, under such rules, restrictions and directions, and in such manner and form, as should be established pursuant to those letters patents: and whereas it is thought that the payment of first fruits and tenths for small livings with cure of souls, is a very heavy burden upon the poorer clergy, for whom her Majesty's unparalleled bounty was designed; and that the immediate discharging of the said first fruits and tenths, and the arrears thereof, of the said small livings, will be a present proper augmentation of the same (several whereof by reason of the said charges are now held in sequestration by temporary curates, without being regularly filled with institution and induction) be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all ecclesiastical benefices with cure of souls, not exceeding the clear yearly value of fifty pounds by the improved valuations of the same (the tenths whereof are by the said recited charter vested in the said corporation) and the incumbents thereof for the time being, and every of them, their respective heirs, executors, administrators, successors and sureties, shall be free and clearly discharged and acquitted

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for ever of and from the said first fruits and tenths, and of and from all arrears of the same.

S. 2. " And for the ascertaining of the clear improved yearly valuations of the said ecclesiastical benefices with cure of souls, intended by this act to be discharged from payment of first fruits and tenths, be it further enacted by the authority aforesaid, that the respective bishops of every diocese, or the guardians of the spiritualities *sede vacante*, and the ordinaries of peculiars, and places of exempt jurisdictions, shall and are hereby empowered and required, as well by oaths of two or more credible witnesses (which they or others duly commissioned by them, under their hands and seals, are hereby empowered to administer) as by all other lawful ways and means, to inform themselves of the clear improved yearly value of every benefice with cure of souls within their respective dioceses and jurisdictions, the clear improved yearly value whereof doth not exceed fifty pounds; and on or before the five and twentieth day of *March*, which shall be in the year of our Lord, one thousand seven hundred and eight, under their respective hands and seals, or seals of their respective offices, to certify into her Majesty's court of *Exchequer* at *Westminster*, the clear improved yearly value of every such benefice with cure of souls, the clear improved yearly value whereof doth not exceed fifty pounds, and such certificate being made, and filed in the said court of *Exchequer*, shall ascertain the clear yearly value of the benefice with cure of souls, intended by this act to be discharged from first fruits and tenths.

S. 3. " Provided always, and it is hereby declared, that this act, or any thing herein contained, shall
not

not extend to discharge any benefices with cure of souls, the tenths whereof were granted away by any of her Majesty's predecessors to any person or persons, bodies politic or corporate, in perpetuity, before the said third day of *November*, in the third year of her Majesty's reign.

S. 4. " And whereas the former act was intended for the augmentation of the maintenance, not only of parsons and vicars, but also of curates, and other ministers officiating in churches or chapels, as is therein mentioned : now for the preventing all doubts touching the capacity of such ministers to take any certain estate to them and their successors, of or in any part or portion of the first fruits and tenths, as shall to them be allotted or applied ; be it enacted and declared by the authority aforesaid, that when any part or portion of the first fruits or tenths remaining to be applied or disposed of by virtue of the said former act, shall be annually, or otherwise applied or disposed of, for or towards the maintenance of any minister officiating in any church or chapel as aforesaid, such part or portion shall from thenceforth for ever be in like manner continued to the minister from time to time so officiating in the same church or chapel ; and every such minister, whether parson, vicar, curate, or other minister for the time being, so officiating in such church or chapel, shall and may from time to time take and receive, and by virtue hereof is and shall be entitled to have and enjoy the same for ever.

S. 5. " And be it further enacted and declared by the authority aforesaid, that this act shall be taken and accepted in all courts and places whatsoever as a public act.

S. 6.

S. 6. " Provided nevertheless, that this act, or any thing herein contained, shall not extend, or be construed to extend, to avoid or diminish any annual sum, stipend, pension, or annuity now in being, which hath heretofore been granted to any person or persons, body politic or corporate, and charged upon the said revenues of first fruits and tenths, or any part thereof; but in case it shall so happen that by discharging such small livings, or benefices with cure of souls, as aforementioned, of the payment of first fruits and tenths, and all arrears thereof, the first fruits and tenths which hereafter shall be collected in any diocese or dioceses, shall not be sufficient to pay and satisfy such annual sums as they now stand respectively charged with, then the whole revenues arising from the first fruits and tenths, throughout the kingdom of *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, shall be liable to make good all such deficiencies, and the said deficiencies shall, out of the said revenues (during the continuance of such grants, from time to time as any such annual payments shall become due) be paid and satisfied to all such person and persons as shall in any wise be entitled to receive the same, in such proportions as are limited and appointed in such respective grants."

See stat. 1 Geo. II. stat. 2. chap. 10. 2 B. E. L.
 261. *Bree and Chaplin, Michaelmas Term, 13*
Geo. III. ante, p. 629. 643.

GEORGE THE FIRST.

I GEO. I. STAT. 2. CHAP. 6.

An Act for (inter alia) explaining and enforcing the said Act, in relation to the Payment of Tithes, &c.*

Sec. 2. “ **A**ND whereas by the said act made in the seventh year of the reign of King William the Third, a remedy is provided for the recovery of tithes and church-rates, where any quaker shall refuse to pay the same; be it enacted by the authority aforesaid, that such remedy shall be, and is hereby extended, and the like remedy shall and may be had and used against any quaker or quakers for the recovering of any tithes or rates, or any customary or other rights, dues, or payments, belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel; and any two or more justices of the peace of the same county or place, other than such justice of the peace as is patron of any such church or chapel, or any ways interested in the said tithes, upon complaint of any parson, vicar, curate, farmer, or proprietor of such tithes, or any church-warden or chapel-warden, or other person who ought to have, receive, or collect any such tithes, rates, dues, or payments as aforesaid, are hereby authorized and required to summon in writing, under their hands and seals, by reasonable warning, such quaker or quakers, against whom such complaint shall be made, and after his or their appearance, or upon default of appearance, the said warning or summons being

proved before them upon oath, to proceed to hear and determine the said complaint, and to make such order therein, as in the said act is limited or directed, and also to order such costs and charges as they shall think reasonable, not exceeding ten shillings, as upon the merits of the cause shall appear just; which order shall and may be so executed, and on such appeal may be reversed or affirmed by the general quarter-sessions of the county or place, with such costs and remedy for the same, and shall not be removed into any other court, unless the title of such tithes, dues or payments, shall be in question, in like manner as in and by the same act is limited or provided."

See stat. 7 & 8 Will. III. chap. 34. and our reading thereon, and references thereto, ante, p. 1282, 1284, 1285.

II. P R E C E D E N T S.

1. *Terriers.*
2. *Lease of Tithes.*
3. *Notice to Payers of Tithe Milk in Kind.*

1. *Form of a Terrier.*

"**A** True note and terrier of all the glebes, lands, meadows, gardens, orchards, houses, stocks, implements, tenements, portions of tithes, and other rights, belonging to the vicarage and parish church of *Orton*, otherwise *Overton*, in the county of *Westmorland*, and diocese of *Carlisle*, now in the use and possession of *Richard Burn*, clerk, vicar of the said church; taken, made, and renewed according to the old evidences and knowledge of the ancient inhabitants, this 10th day of *November*, in the year of our Lord 1749, by the appointment of
the

the right reverend father in God *Richard* lord bishop of *Carlisle*, at his primary visitation held at *Appby*, in the said county and diocese aforesaid, the eighth day of *June* in the same year, and exhibited before the reverend and worshipful *John Waugh*, doctor of laws, chancellor of the aforesaid diocese, on the twentieth day of *November* in the year aforesaid.

“ *Imprimis*, One slated dwelling-house, in length fifty-one feet, in breadth nineteen feet, within the walls. One thatched barn, stable, cow-house, and peat-house, contiguous to each other under the same roof; in length eighty-one feet, in breadth twenty-one feet, without the walls. One other title stable, in length thirteen feet, in breadth twelve feet and an half; adjoining to the peat-house at the south-west side and end. *Item*, The church-yard, containing three roods and nineteen perches; adjoining to the grounds of *Robert Teasdale* on the south, of *Richard Alderson* on the west and north, and to a close belonging to the said vicarage, called prior garth on the east: the walls and gates thereof round about made by the parish. *Item*, One inclosure called prior garth, containing three roods and seven perches; adjoining to the church-lane on the south, to the church-yard on the west, to the ground of *Richard Alderson* on the north, and to the highway on the east: through which there lies a foot-path from the vicarage house to the church, but for no other purpose: the wall and hedge on the south, north, and east made by the vicar; and on the west, where it adjoins to the church-yard, by the parish. *Item*, One garden, containing one rood and eleven perches; adjoining to the vicarage garth, and to the ends of the barn and of the dwelling-house, on the south; to the highway on the west and north; and

to the said garth on the east: the fences round about made by the vicar. *Item*, One parrock, containing twenty-four perches and an half; adjoining to *Orton* green on the south, to the highway on the west, to the end of the dwelling-house on the north, and to the vicarage garth on the east: the fence round about made by the vicar. *Item*, One garth, containing one acre, fifteen perches and an half; adjoining to the grounds of *John Powley*, *Daniel Teafdale*, and *Orton* green on the south; to the said parrock, barn and garden on the west; to the peat-house end, garden, and highway on the north; and to a close belonging to the said vicarage, called corn close, on the east: the fence round about made by the vicar, except that *John Powley* makes the fence where it adjoins to his ground, and *Daniel Teafdale*, from thence to the bottom of the old lime kiln: through which garth lies a foot path for the said *John Powley* and *Daniel Teafdale*, to and from their said grounds, and likewise a driving way for their sheep, which they frequented whilst the common field was uninclosed, but is now become almost useless. *Item*, One inclosure, called corn close, containing one acre, one rood, and twenty-one perches; adjoining to the said *John Powley's* lane, and to a place of ground before his barn called a flee-room, and to his garth on the south; to the vicar's said garth, on the west; to the highway on the north; and to the high way of *John Powley's* lane on the east: the fence all about made by the vicar, except where it adjoins to *John Powley's* garth and barn. All which said corn close, garth, garden, and parrock, have been inclosed ground for time immemorial, and the vicar in respect thereof hath not repaired any part of the highways adjoining thereunto. Opposite to the same, on the north side, is an inclosure made by *Daniel Teafdale*,
about

about nine years ago, by which the highway was made into a lane. *Item*, One inclosure called fore-dale, containing three acres and fifteen perches; adjoining to the grounds of *Robert Teasdale* and *John Nelson*, on the south, of *John Nelson* on the west, of *John Powley* and *Robert Teasdale* on the north, and of *Robert Teasdale* on the east: all the fences made by the vicar, except where it adjoins to the said *John Nelson's* inn-croft, and except half the length of the said *John Nelson's* out-croft, from the middle to the east end, the said *John Nelson's* fence being stone wall: from the east end of which inclosure lies a way through *Robert Teasdale's* ground, which the present incumbent purchased of the said *Robert Teasdale*, to an inclosure belonging to the said vicar (but not to the vicarage), called long roods; which is to continue for ever, and may be of use if at any time hereafter the said two inclosures (fore-dale and long roods) shall be occupied by the same person, or otherwise. *Item*, One other inclosure, called the greater mill-brow, containing one acre, three roods, and seven perches; adjoining to the ground of *John Powley* on the south, to a tillage way enjoyed and repaired by the said vicar on the west, to the ground of *Thomas Ireland* on the north, and of *John Powley* on the east: all the fence made by the vicar, except about sixteen yards of stone wall at the north-east end, belonging to *John Powley*. *Item*, One other inclosure, called little mill-brow, containing twenty-eight perches; adjoining to the ground of *John Powley* on the south, of *Isabel Atkinson* on the west, of *Isabel Atkinson* and *Thomas Ireland* on the north, and the said tillage way on the east: the fence all made by the vicar: through the south-west corner of which inclosure is the ancient water-course. The said three last inclosures were made out of the common field by the

the present incumbent. *Item*, One other inclosure, called glebe close, lying at *Firbiggins*, containing eight acres and three roods; adjoining to the ground of *Elizabeth Turner* on the south, of *Elizabeth Turner* and *William Thwaytes* on the west, of *William Thwaytes* on the north, and to the common on the east: the wall at the east end is made by the vicar, at the west end by *Elizabeth Turner* and *William Thwaytes*: the right of repairing the fence on the north side, and on the south side is in dispute, and not yet determined. At the end of *Elizabeth Turner's* house, an oak gate is to be maintained, by the owners of coat garth; for which they enjoy a liberty of ingress and egress for themselves and families, and liberty of driving cattle in the winter from *Martinmas* to *Lady-day*, doing as little damage as may be; and of passing with peats or other firing in summer. Belonging to the said glebe close, and occupied therewith, there is likewise a parcel of ground, leading from the said gate to *Elizabeth Turner's* house end, north-eastward, to the said glebe close, having the wall on the left hand, and mered out from *Elizabeth Turner's* ground on the right, in breadth three yards or upwards, being the way to and through the said glebe close. *Item*, Another parcel of ground, in the common field, called north lands, containing two roods and five perches; adjoining to the ground of *Robert Teasdale* on the south, of *John Nelson* on the west and north, and of *Robert Teasdale* on the east. *Item*, Another parcel of ground in the common field, called potlands head, containing one rood; adjoining to the ground of *Robert Teasdale* on the south, of *Elizabeth Waller* on the west down by the runner, of *John Nelson* on the north, and of *Robert Teasdale* on the east. All which said lands, containing in the whole nineteen acres and upwards, are situate within the lordship

ship and manor of *Orton*, free from the payment of any fines, rents, or services to any chief lord; the royalties of which said lands are also in the vicar.

Item, A parcel of peat moss in *Orton* low moor, containing by estimation ten acres, known by the name of the vicar's moss.

“ *Item*, To the said vicarage is also belonging the tithe of *wool* throughout the parish; and the manner of tithing is this: The owner lays his whole year's produce in five parcels or heaps; the vicar, or person employed by him, chuseth one of the five heaps, which he pleaseth, and divides the same into two parts; of which two parts the owner chuseth one, and leaves the other to the vicar for his tenth part.

Item, The tithe of *lambs* in their proper kind throughout the parish; and the custom concerning them is this: If a person's number is one, he pays a penny; if two, he pays two pence; if three, he pays three pence; if four, he pays four pence; if five, he pays half a lamb; if six, a whole lamb, the vicar paying back four pence; if seven, three pence; if eight, two pence; if nine, one penny; if ten, the vicar hath a lamb compleat: and in like manner for every number above ten. And if a man's number is under fifty, the tithe is taken thus: The owner takes up two, then the vicar takes one; next the owner takes nine, then again the vicar one; and so on till the vicar hath taken the number due to him: if they are fifty, or upwards, they are put into a place together, and run out singly through a hole or gap; the two first that come out are the owner's; the third the vicar's; then the owner has the next nine; then the vicar one; and so on, till the vicar hath his number. And if sheep are sold in the spring, the tithe of lambs is paid by the person with whom they were

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lambed, whether seller or buyer. *Item*, The tithe of *goose*, taken up about *Michaelmas*, in the same manner as he lambs; except that whereas a penny is paid on the account of each odd lamb, one half-penny only is paid for each odd goose. *Item*, The tithe of *pigs* in like manner. *Item*, The tithe of *eggs* about *Easter*; two eggs for each old hen and duck, and one egg for each chicken and duck of the first year. *Item*, By every person who sows *hemp*, is paid yearly one penny. *Item*, for each *plough* is paid yearly one penny. *Item*, By every person keeping *bees* is paid yearly one penny. *Item*, An oblation of four pence at every *churching of women*. *Item*, For every *wedding* by publication of banns, one shilling; by licence, ten shillings. *Item*, For every *funeral* (without a sermon) sixpence. *Item*, *mortuaries*, according to act of parliament. *Item*, For every person of age to *communicate*, three halfpence yearly, due at *Easter*. *Item*, A pension of twenty shillings yearly out of the rectory of *Sedbergh*, in the county of *York*. — The glebe, tithes, and profits of the vicarage, are worth at the improved value, *communibus annis*, about ninety pounds a year.

“ There is also due to the *parish clerk*; for every family keeping a separate fire, three pence yearly. For every wedding by publication, or by licence, one shilling. For every funeral six pence. For every proclamation in the church yard, two pence.

“ To the *sexton* for making a grave, sixpence:

“ Belonging to the said parish — are, first, the parish church, an ancient building, containing in length (with the chancel) ninety six feet, in breadth forty eight feet: the chancel in breadth one part
thirty

thirty feet, the other part twenty one feet. The steeple fifteen foot square within the walls, in height sixty feet. Within, and belonging to which, are, one communion table with a covering for the same of green cloth. Also one linen cloth for the same, with two napkins. Two pewter flaggons. Two silver chalices, weighing about ten ounces each. One patten. One basin for the offertory. One table of degrees. One chest with three locks, in the vestry, of little use because of the damp. One pulpit and reading desk, made in the year 1742. One pulpit cushion, covered with green cloth. One large Bible of the last translation. Two large Common Prayer books. The book of Homilies. *Cember* on the Common Prayer, and *Tillotson's* first volume of sermons, given by Mr. *Thomas Haflwell*, merchant in *London*, 1703. The King's arms with the Ten Commandments. One church clock. Four bells with their frames: the first, or least bell, being two feet seven inches and an half in diameter; with this inscription [*Jesus be our speed*, 1637.] The second, two feet and eleven inches in diameter, with an ancient inscription [*omnium animarum*], perhaps by a mistake of the bell founder for [*omnium sanctorum*], to whom the church is dedicated: the third, three feet and two inches in diameter; with this inscription [*soli Deo gloria*, 1637]. The fourth, or largest, three feet six inches and an half in diameter; with this inscription [*Mr. Thomas Nelson, vicar. John Bowness. John Winter.* 1711.] Two biers. One horse cloth. Two surplices. Three parchment register books; one beginning in 1596, and ending in 1646, imperfect; the second, beginning in 1654, and ending 1743, compleat; the third, beginning 1743, and continued to the present time. The seats in the church and chancel (except the vicar's pew) have

been repaired for time immemorial at the public expence of the parish. There are also several new common seats erected this year by the church-wardens, at the low end of the church, adjoining to the belfry.—There is also belonging to the said parish, the *rectory* thereof, together with the tithes of corn, hay, calves, milk, and other dues, which did formerly belong to the priory of *Conisbend* in *Lancashire*, and after the dissolution of monasteries were purchased by the inhabitants.—Also the *advowson* of the vicarage which did belong to the said priory, and was likewise purchased with the rectory.—Also one box with three locks, in the keeping of *John Unbank* of *Orton*; in which are the purchase deeds of of the rectory and advowson; a copy of the endowment of the vicarage in 1263; the purchase deeds of the manors of *Orton* and *Raisbeck* by the inhabitants; bounder rolls; and other public writings.—There is also belonging to the said parish, one inclosure in the lordship of *Raisbeck*, called *Barrough* close, containing by estimation fifteen acres, of the yearly rent of six pounds; adjoining to the river *Lune* on the south, to the ground of *Thomas Fothergill* on the west, to the common on the north, and to the grounds of *Leonard Scaife* on the west: the fence on the south made by the parish; on the west by the parish and *Thomas Fothergill*, each a part; on the north by the parish; and on the east by the parish and *Leonard Scaife*, each a part.—Also the sum of twenty pounds, in the hands of *Thomas Winter* of *Wood-end*, given by *John Dalsen*, Esq; of *Acornbank*. Also the sum of three pounds ancient poor stock, in the hands of the administrators of the late *George Overend* of *Raisbeck*. Also the sum of ten pounds, now in the hands of the vicar, given by *Daniel Wilson*, Esq; of *Dalbarn Tower*. Also the sum of five pounds, in the hands

hands of Mr. *Edward Brambwaite* of *Carlingill*, given by him towards a fund for the poor stock. Also the sum of five pounds in the hands of *Thomas Hodgson* of *Tebay-gill Edge*, given by Mr. *Robert Harrison* of *Low Scailles*, deceased, for the same purpose. The interest of which money, and the rent of which inclosure, are applied by the church-wardens and overseers of the poor, by the direction of the *Twelve*, to the relief of the poor, and defraying other parish charges. Which said twelve men are chosen yearly in *Easter* week at a vestry meeting by a majority of votes, to be sidersmen and a select vestry for the year ensuing.

“ There are also three *schools* in the said parish. One at *Orton*, lately built by the inhabitants, and endowed by *Agnes Holme* of *Orton*, widow, with a parcel of land lying in *Orton* field, containing by estimation one acre, of the present yearly rent of ten shillings; adjoining to the grounds of *Christopher Parker* on the south, west, and east, and to a land belonging to the vicarage of *Burgh* on the north: endowed also by *Robert Wilson* of *Long Sleddale*, yeoman, with the sum of five pounds, now in the hands of *Thomas Green* of *Langdale*.——Another school at *Tebay*, founded by *Robert Adamson* of *Blacket Bottom* in *Grayrigg*, gentleman, in the year 1672, and endowed by him with the estates called *Ormandie Biggin* and *Blacket Bottom* in *Grayrigg*, now of the yearly rent of sixteen pounds.——Another school at *Greenholm*, founded by *George Gibson* of *Greenholm*, gentleman, in the year 1733, and endowed by him with four hundred pounds original bank stock; of the yearly produce of about twenty-two pounds.

“ In testimony of the truth of the beforementioned particulars, and of every of them, we, the mini-

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ster, church-wardens, and principal inhabitants, have set our hands the 10th day of *November*, in the year of our Lord 1749.

Ri. Burn, vicar.

Joseph Powley,
John Bowness,
Edmund Dent,
Stephen Matthews,
George Wilson,
Will. Rowlandson,

} Church-wardens.

These terriers are of some weight, even in the temporal courts, when duly attested by the register, especially if they be signed, not only by the parson and church-wardens, but also by the substantial inhabitants; but if they be signed by the parson only, they can be no evidence for him; so neither (as it seemeth) if they be signed only by the parson and church-wardens, if the church-wardens are of his nomination: but in all cases they are certainly strong evidence against the parson. *Theo. Evid.* 45. 3 *B. E. L.* 366. 1 *B. J. P.* 321. *Bul. Ni. Pr.* 248.

See Wilkinson and Allott, E. 17 Geo. III. 791, 792, 793, 797. The bishop's registry is the proper repository for them. *S. C.* 797.

2. * *Form of a Lease of Tithes.*

THIS indenture made the first day of *January*, in the twenty-third year of the reign of our Sovereign Lord *George* the third, by the grace of God, of *Great-Britain, France, and Ireland*, King, defender of the faith, and so forth; and in the year

of our Lord † 1783, between the right reverend father in God, Sir *William Ashburnham*, baronet, doctor of divinity, rector of *Gessling*, in the county of *Suffex*, and Lord Bishop of *Chichester*, of the one part, and *Thomas Smith* of the parish of Saint *Martins in the fields*, within the city and liberty of *Westminster* and county of *Middlesex*, gentleman, of the other part, WITNESSETH, that the said Lord Bishop, for and in consideration of the rent herein after reserved, and covenants, contained, H A T H demised, granted, and to farm let, and by these presents D O T H demise, grant, and to farm let, unto the said *Thomas Smith*, his executors, administrators, and assigns, A L L and all manner of tithes of corn, grain, hay, and herbage, yearly growing, increasing, or happening, within the said parish of *Gessling*, and all profits of what kind soever, belonging to the parsonage or rectory there; T O HAVE, hold, receive, and take, all and every the said tithes and profits, unto the said *Thomas Smith*, his executors, administrators, and assigns, from the day of the date of these presents, for and during, and unto the full end and term of twenty-one years from thence next ensuing, and fully to be completed and ended; if he the said Lord Bishop shall so long continue rector of the said parish of *Gessling*, YIELDING and paying therefore, yearly, and every year, during the said term, unto the said *Lord Bishop* and his assigns, the rent or sum of two hundred pounds, at and upon the four most usual feasts, or days of payment in the

† Deed forty years old proves itself, and no proof is required where the party had it, or how he came by it. *Benson and Olive*, Trinity Term, 3 & 4 Geo. II. ante, p. 320. and *Michaelmas* Term, 6 Geo. II. ante, p. 355. Deed thirty-five years old, does not prove itself. *Benson and Olive*, Trinity Term, 3 & 4 Geo. II. ante, p. 320.

year, (that is to say) *the annunciation of the blessed Virgin Mary, the nativity of Saint John the Baptist, the feast day of Saint Michael the Archangel, and the birth of our Lord Christ*, by even and equal portions, the first payment thereof to begin and be made on *the annunciation of the blessed Virgin Mary*, next and immediately ensuing the day of the date of these presents : PROVIDED always, that if the said rent or annual sum of two hundred pounds, or any part thereof, shall happen to be behind or unpaid for the space of fourteen days next over or after any of the said days and times herein before appointed and limited for payment thereof, then and in such case, this present demise, and every clause, article, and thing herein contained, shall cease, determine, and be utterly void, and of none effect, any thing herein contained to the contrary thereof in any wise notwithstanding. And the said *Thomas Smith* doth hereby for himself, his heirs, executors, and administrators, and for every of them, covenant, promise, grant, and agree to and with the said *Lord Bishop*, his heirs, executors, and administrators, and to and with every of them, by these presents, in manner and form following, that is to say, that he the said *Thomas Smith*, his executors, administrators, or assigns, shall and will from time to time, and at all times hereafter, during the continuance of this present demise, well and truly pay and satisfy, or cause to be well and truly paid and satisfied, the rent or annual sum of two hundred pounds aforesaid, at the days and times aforesaid herein before stipulated for payment thereof; and also that he the said *Thomas Smith*, his executors, administrators or assigns, or some or one of them, shall and will truly pay and faithfully discharge all taxes, assessments, and impositions whatsoever, or by whatsoever name or names the same may be described.

scribed, which shall be charged upon the said demised premises, or upon the said *Lord Bishop*, in respect of the same, by authority of parliament or otherwise howsoever. A N D the said *Lord Bishop* for himself, his heirs, executors and administrators, and every of them, doth hereby covenant, promise, grant, and agree to and with the said *Thomas Smith*, his heirs, executors and administrators, and to and with every of them, by these presents, in manner and form following, (that is to say) That for and under the rent or annual sum of two hundred pounds aforesaid, and of the covenant herein before reserved and contained on the part and behalf of the said *Thomas Smith*, his executors, administrators or assigns, to be paid, kept, done and performed, he the said *Thomas Smith*, his executors, administrators, and assigns, shall and may have, hold, occupy, possess, and enjoy, the tithes and premises aforesaid, and every part and parcel thereof, during the said term, hereby granted, without any let, trouble, molestation, interruption, or denial of him the said *Lord Bishop*, or his assigns, or of any other person or persons whomsoever, lawfully claiming, or to claim, from, by, or under him, them, or any of them, IN WITNESS whereof all the said parties to these presents, have hereunto * *inter-*

* This word "*interchangeably*" is indiscriminately inserted in all deeds, but we apprehend *erroneously*, where both the deeds are originals, that is, both parts or engrossments executed by all parties; for the word *interchangeably* in law means, that the granting parties have executed one part, and the parties to whom the premises are granted, have executed another part of the deed; in this case both parts are considered only as one deed, in point of law, as for instance, this lease, one part whereof is here executed by the lessor, the *lord bishop*, the other part by the lessor, the said *Thomas Smith*, both these parts are deemed, in the eye of the law, as *one deed only*; it is advisable, that all the engrossments of all deeds of absolute conveyance, should be originals

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changeably set their hands and seals, the day and year first above written.

William † CHICHESTER.

Scaled and † delivered (§ being first duly ¶ stamped, in the presence of

James ** *Marriot*, coach-maker †† *Long-Acre*.

See the appendix to the appellant's case in the cause of Lord Brownlow and Devie, ante, p. 1031. 1035.

It

† Bishops being *only* lords of parliament, sign by their Christian name, and that of their see; whereas peers of the realm, sign by their name of dignity only; formerly bishops signed in the plural number. See *ante*, p. 752.

‡ A deed must be *sealed* as well as *delivered*, for the one will not do without the other; because, if only a *seal* made a deed, a will or even a *letter* would be a deed, they being both *sealed*; and if delivery only would make a deed in point of law, a mere *memorandum* might be a deed, by being only delivered. See *Left's* reports, B. R. 340.

§ If the deed consists of more skins of parchment or sheets of paper than one, the word "*every*" must be here introduced between the words "*delivered*" and "*being*," the legislature having omitted the word *paper* in stat. 19 Geo. III. chap. 66, renders the most essential provisions of that act entirely nugatory.

¶ This lease, for whatever term it is, must be engrossed on a five shilling stamped skin of parchment or sheet of paper, by the several stamp acts, viz. by statute of

	£.	s.	d.	
5 <i>W. & M.</i> c. 21. f. 3.	0	0	6	} £. s. d. 0 5 0
9 & 10 <i>W.</i> III. c. 25. f. 30.	0	0	6	
12 <i>An.</i> stat. 2. c. 9. f. 21.	0	0	6	
30 <i>Geo.</i> II. c. 19. f. 1.	0	1	0	
16 <i>Geo.</i> III. c. 34. f. 5.	0	1	0	
17 <i>Geo.</i> III. c. 50. f. 17.	0	1	6	

The first mentioned act, is in the Statutes at Large, 5 *Wil.* and *Mary*, as above; but in stat. 6 *Wil.* III. chap. 12. sect. 1. 8 *Wil.* III. chap. 20. sect. 12. 1 *An.* stat. 1. chap. 13. sect. 11. 5 *An.* chap. 19. sect. 3. it is said to have passed in 5 & 6 *Wil.* and *Mary*. In statute 20 *An.* chap. 19. sect. 180. 12 *An.* stat. 2. chap. 9. sect. 30. 6 *Geo.* 1. chap. 21. sect. 54. the above act is said to have passed in 5 *Wil.* and *Mary*.

If the deed be engrossed on parchment, one skin must not contain more than thirty *Chancery* sheets, that is, ninety words, nor more of com-

It is said generally in some books, that a parol lease of tithes is not good; others say, that tithes may be granted for one year without deed, but no longer; others distinguish and say, that a grant for tithe corn for one year, is not good by way of lease,

mon law sheets, that is, twenty-two words. See Stat. 19 *Geo.* II. chap. 66. sect. 12, 13. and if the tithes arise in the East or West Riding of *Yorkshire*, or in the county of *Middlesex*, the lease must be registered. See Stat. 2 *An.* chap. 4. 6 *An.* chap. 35. 7 *An.* chap. 20. and 8 *Geo.* II. chap. 6.

•• I submit, whether one witness to a deed is not better than two, (except to deeds creating special powers, and directing them to be executed in the presence of more witnesses than one; and also except last wills and testaments, which must have three at least, if they devise real estates) because in case of the death or absence of one, you cannot be admitted to prove his hand-writing, until you have proved the death or absence of the other (See *Bar. Observ.* on Stat. 175, 176. n. 12 *Fin. Abr.* 222. [T. b. pl. 10, 12, 13.] *Com. Rep.* 614. pl. 265. 2 *Tr. Aik. Rep.* 48. pl. 39.) which difficulty may also sometimes occasion much inconvenience, if not detriment, to clients.

I have always been astonished, that lawyers, of the first abilities, should call in waiters at taverns and coffee-houses, and other such persons and generally perfectly strangers to the parties who are to execute the deeds, to attest to their sealing and delivery of them, because persons who do not know the parties on sight of them, and it seems that such changes are not likely, are not legal witnesses to prove the sealing and delivery of any deed. See 12 *Fin. Abr.* 216. pl. 9. *Bul. Ni. Pri.* 171.] I submit further, whether attorneys and solicitors are not, in general, rather too forward in attesting the execution of deeds, to which their clients are parties, and too remiss in not advising them, when they desire them to become witnesses, of the impropriety of such request, as courts of justice may happen to be inclined to consider, the desire of the client as a consent in him, that his attorney or solicitor should give evidence (as the event may afterwards turn out) to the client's prejudice: this inattention may, at some time or other, unwarily draw the profession into disagreeable situations, with regard to their clients.

†† If attorneys and solicitors would, instead of becoming witnesses themselves, remind witnesses to add their occupations and places of abode to their names, I venture to assure them, that it would answer many valuable purposes to their clients, for want of which additions, there are instances, and those not a few, wherein they have been materially aggrieved and injured; and besides, if the deed is to be registered, such additions are absolutely required by law. See Stat. 6 *An.* chap. 35. sect. 10.

but

but may be so by way of sale; others, to the like purpose affirm, that if the parson agrees with the parishioners, that the parishioner shall keep back his own tithes for a year, that this is a good bargain by way of retainer; but if he grants to him the tithes of another, though it be but for a year, it is not good, unless it be by deed. See *Cro. Jac.* 613. *Rel. Rep.* 174. *Godolph. Repert. Canon.* 354. 1 *Fresm. Rep.* 234. pl. 242. 2 *Brownl.* 17. *Keddington and Bridgman, H. 2 Geo. I. ante*, p. 132.

See the case of the Archbishop of York and Sir Miles Stapleton, *Hilary Term*, 13 *Geo. II. ante*, p. 387.

3. *Form (1) of a Notice to be delivered to the Payers of Tithe Milk in Kind.*

“THE court of *Exchequer* having decreed in the cause (2) of *Beswerth* against *Limbrick*, and others, that the tithe of milk ought to be paid by setting out, as tithe, the whole meal of milk, on every tenth morning, and the whole meal of milk, on every tenth evening; I hereby give you notice, to set out the tithe of milk, arising on the lands you occupy, within the parish of _____ conformably to that decree; computing the first tenth morning’s meal, and the tenth evening’s meal, where your first tithe meals of milk ought to be set out, from the first milking time, which shall happen, after your receiving this notice.”

(1) This seems a very imperfect notice, as to form at least, the same having no date, nor being signed by any person. *Y. R.*

(2) See the case under *Michaelmas Term*, 28 *Geo. III.* p. 809, 832.

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As no jury can be summoned to attend the *Chancery*, even in the petty-bag office, if the parties descend to issue, the Lord Chancellor or Keeper, or, first Lord Commissioner, delivers the record with his own hands into the *King's Bench*, or *Common Pleas*, to be tried there. *Introduct. lxvii. n.*

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and *Codrington*, T. 11 W. 3.

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No tithes due for conies, unless
by custom Introd. vii

Tithes for conies decreed *Shires*
and *Burgeine*, 12 Car. 1. 19

Defendant to bill for tithes of co-
nies, not obliged to discover
how many conies he killed, or
the value of them. *Randal*
and *Head*, E. 13 Car. 2. 3f

Tithes for conies are against com-
mon right. E. 13 Car. 2. 32

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This writ defined. Introd. vi. n.
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Contradictions.

Mr. justice *Blackstone* and doctor
Burn seem to contradict them-
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Arguments of convenience can-
 not alter nature of tithes. In-
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Copledike, John.

John Copledike, one of the con-
 freres of the Catholic religion,
 allowed a pension for life, upon
 the dissolution of monasteries
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Copyholders.

They have their fines and services
 ascertained, by the aid of the
 court of *Chancery*, by directing
 trials for that purpose first, and
 afterwards decreeing according
 to their verdicts on such trials.
Rush v. Ripley, M. 22 Car. 2.
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No tithe payable for involuntary
 rakings of corn, but if fraud
 in leaving more than is ne-
 cessary, then tithe to be paid
Anon. M. 9 Wil. 3. 86

Tithe of corn ground in an horse
 malt mill is a personal tithe, and
 due only where it has been paid
 forty years before, and it is not
 payable by the tenth toll-dish of
 the corn ground, but by a tenth
 part of the real profits, over
 and above all incident charges.
Newte and Chamberlain, E.
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Settled by a judgment of the House of Lords, upon an appeal from a decree of the court of EXCHEQUER, that only a personal tithe is due from the occupier of a corn mill. *Newte and Chamberlain* 1090

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Catalogue of monasteries in this county, of the yearly value of 200l. or upwards, dissolved by statute 31 Hen. 8. c. 13. and thus capable of discharge from tithes App. 1210

Corporation.

A temporal corporation cannot prescribe in *non-decimando*. Corporation of *Bury and Evans*, E. 12 Geo. 2. 380.

Costs.

Costs in a cause against several defendants, though they defend severally, will not be separated.

Pook v. Draper, M. 8 Wil. 3.

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When parishioners shall pay costs.

Smithson v. Dodson, M. 2 Geo. 1.

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Decree against one defendant, the other making default, with the whole costs. *Lloyd v. Mackworth*, M. 10 Geo. 1. 196

Court decreed plaintiff his costs generally, on a bill for thirteen different sorts of tithes, though but one species of tithes proved to be due to him, and his demand not abridged by his replication. *Smith and Morgan*, H. 7 Geo. 2. 341

Copy of the plaintiff's bill of costs, in the cause between *Bateman and Aistrup* 708

Reasons for inserting it *Id.* 691, n.

The House of Lords order a parishioner to pay parson exemplary costs for injuriously taking his tithes, and withholding them from him. *Allot and Wilkinson*, E. 15 Geo. 2. 728. E. 17 Geo. 3. 798. Introd. cxx, cxxi

Parishioner setting up a fair defence, therefore not condemned in costs, on being decreed to account for tithes. *Travis and Whitehead*, M. 16 Geo. 3. 775

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Tender

I N D E X.

Tender must be before, as well as by answer, in order to save the defendant his costs. *Anon. M.*

5 Geo. 1. 144

Plaintiff intitled to his costs at law only, and not in equity, though a *modus* be established by two verdicts, on issues directed by the court of *Chancery*, to try the same. *Clifton v. Orchard, H.*

11 Geo. 2. 351

Though discretionary in the court, costs are never given, when the party either deserts, or fails in proof of the right, which he himself states and claims. *Hewitt v. Adams E.*

22 Geo. 3. 1008

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Coverham in *Yorkshire*.

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Cowell, Dr.

Doctor *Cowell* is said to be formally charged with having endeavoured to expose *Lyttleton's* Tenures

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For tithes in this parish, see *Bennet, Doctor, and Treppass, M. 9 Geo. 1. 168. H. 9 Geo.*

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Croftswaite, in Cumberland.

For the tithes in this parish, see
Christian and Wrenn, M. 6 Geo.
2. 335. *Laites and Christian,*
M. 8 Geo. 2. 345

Crowland Abbey, Lincolnshire.

For tithes in this place, *Perne* and
Oldfield, T. 32 Car. 2. 60.
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Crown.

Every patentee of the crown,
who can lay claim to tithes,
must claim it by virtue of stat.

31 *Hen. 8.* chap. 13. or other
statute for the dissolution of re-
ligious houses. Corporation of
Bury & another, and Evans, E.
12 *Geo. 2.* 374, 375

Right of the crown can never be
legally taken away by collusion.

Cholmley and Attorney-General.
M. 8 Geo. 3. 564

Acquiescence cannot be urged as
an objection to the crown. *S. C.*

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The King is *persona mixta.* *Trowis*
and *Whitehead, T. 17 Geo. 3.*

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Proof necessary by lay impropria-
tor claiming under the crown,
Leigh and Mandisley, H. 4 Geo.
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King discharged of all tithes. In-
trod. lv.

But his lessee or tenant shall pay
tithe Introd. lv.

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Cumberland.

Concerning tithes in this county,
see *Croftswaite.*

Catalogue of monasteries in this
county, of the yearly value of
200 l. or upwards, dissolved by
stat. 31 *Hen. 8.* chap. 13. and
thus made capable of being
discharged from tithes. App.

1210

Curate.

Curate coming in by the ordinary,
though neither parson nor vi-
car, is capable of tithes. *Perne*
v. *Oldfield, T. 32 Car. 2.* 60

Curate, though made perpetual,
being removeable at pleasure,
cannot sue for tithes. *Price v.*

Pratt,

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Pratt, M. 3 Geo. 2. 252. see
Wild and Aston, E. 4 W. & M.

.74

Till the reign of King *Henry* the
Third, rectors found curates,
and maintained them by certain
stipends or wages, but after the
constitution of Pope *Urban*, the
eighth, rectors, instead of the
former wages or maintenances,
assigned to their curates, who
then began to be called vicars,
a certain portion of the tithes

396. n

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Curfitor Baron.

John Tracy Atkins, the reporter,
was Curfitor Baron of the court
of *Exchequer* Auth. ii. n

Custom.

- Custom is a proper and equitable
rule Introd. xvi
- Custom defined Introd. xlii
- Custom changes great tithes into
small. Introd. lxxi
- Bull decreed to be kept according
to custom. Introd. xvii. n.
- Ecclesiastical custom held good at
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- Difference between things tithe-
able *de jure*, and by custom,
Introd. xxxix
- Though the court of *Chancery*
does not take customs so strictly
certain as courts of law, yet it
requires them to be substantially

laid. *Carte v. Ball*, E. 20 Geo.
2. 414

Courts of equity have decreed
against customs to pay less than
a tenth part in kind, as unrea-
sonable, being only part of the
tithe, in lieu of the whole.
Brinklow and Edmunds, M. 5
Geo. 2. 331. Archbishop of
Yorke, and Sir *Miles Stapleton*,
H. 13 Geo. 2. 389. *Hewitt*
and *Adams*, E. 22 Geo. 3.
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Custom of tithing that has never
been established at law, will
never be decreed in equity.

Gawle v. Lake, 5 Car. 1. 17

Custom for owners of cattle fed
upon a large common, ex-
tending itself into several pa-
rishes, paying tithe of such
feeding to the parson of the
parish, where they respectively
live, and not to the parson of
the parish, in which the cattle
occasionally feed, held to be a
good custom. *Crisp and Mickle-*
burgh, T. 7 Anne 115, 1091

Custom for the gathering tithes
should be observed. *Dod v.*
Ingledon, M. 31 Car. 2. 57

Issue directed to try a custom,
though no proof of it made.
Earl Scarborough v. Hunter, E.
6 Geo. 1. 146

Court would not let defendant
prove the particular custom,
upon a general allegation in

I N D E X.

a bill for the tithes of corn, wheat, rye, and barley. *Boughton v. Wright*, H. 11 Geo. 1.

201

The custom set forth in this cause, relating to the tithe of fish, was found by a jury, on a trial at bar, to the satisfaction of all the court, but Baron *Carter*. *Gwavas's case*, E. 2 Geo. 2. 247. *Gwavas v. Kelynack*, M. 3 Geo. 2.

251

Where tithes in kind are due only by custom, it seems impracticable to deduct the expences. *Kelynack and Gwavas*, H. 3 Geo. 2.

287

Laying a custom for the parishioners to give notice of setting out tithes, or that there is some other custom of the like nature, held bad, and bill dismissed with costs. *Brewer v. Spratley*, H. 7 Geo. 2.

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The reasonableness or unreasonableness of a custom, how to be ascertained. *Full and Hutchings*, T. 22 Geo. 3.

1005

Custom must be reasonable, legal, and not inconveniently expensive. *Full and Hutchings*, T. 22 Geo. 3.

1010

A legal custom must be precisely pleaded, and in the form required by courts of law and equity. S. C. S. P.

A good and well pleaded custom, must also be supported by evidence. S. C. S. P.

A custom against common reason is void. *Mounson and Chapman*, H. 3 Geo. 2.

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Hawks
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Customary *modus*. See *Modus*.
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D.

Dalston in Yorkshire.

FOR the tithes in this parish, see *Saint Mary's case*, M. 23 Eliz.

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Daniel and *Tusnall*.

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His death prevented his being
installed Chief Justice of *Eng-*
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Decrees for account of tithes in
the court of Chancery, are ge-
neral, *viz.* to account for all
that are due, without specify-
ing any particular period, or
limiting the account to a cer-
tain determinate time. *Bell v.*
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No decree for account of tithes,
without costs, unless a tender.
Stockwell v. Terry, T. 22 & 23
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Decree against a person, who was
no party to the suit, nor the pre-
sent defendants parties to that
suit, admitted to be read. *Nicho-*
las and Austen. T. 2 Geo. 1. 131

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of parties, decree thereon is
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ment, as a matter of course.
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and conclusive upon the per-
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- Appeals
- Compositions
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- Evidence
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- Deed forty years old, proves it-
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- The word *interchangeably* errone-
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- All engrossments of deeds of ab-
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inserted in the attestation of
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- All deeds must be duly stamped.
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- Skin of parchment, whereon a
deed is engrossed, must not
contain more than thirty Chan-
cery sheets, (*viz.* ninety words)
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East or West Riding of *York-*
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Consultations
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Milk
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Prescriptions
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Prohibitions
Small tithes
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The delegates are the great court
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Defendant must take advantage of
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An objection to the credit of a
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Catalogue of monasteries in this
county, of the yearly value of
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rendered capable of being ex-
empted from the payment of
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 8. chap. 13. and thus capable
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 medy for dilapidations, void
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 Lands discharged of tithes by
 the counsel of *Lateran*, are dis-
 charged by law, as all lands
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der are. *Stavelay and Ullisthorpe,*
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 Once discharged of tithes, always
 so *Id.* 23
 In whose hands lands, as having
 been part of some abbey of the
Cistercian order, shall be dis-
 charged of tithes, by virtue of
 the statute for the dissolution
 of monasteries, *Wilson and Red-*
man, M. 12 *Car.* 2. 28
 Defendant set forth in his answer,
 that the lands wherein the tithes
 were demanded, were parcel of
 a priory, which was discharged
 by order, without more, and
 held to be good: *Page's case,*
H. 14 & 15 *Car.* 2. 34
 Non-payment of tithes, a pre-
 sumptive evidence, that the
 land is discharged by the en-
 dowment. *Harclems and Chittle,*
H. 6 *Wil.* 3. 77
 Though tenant cannot prescribe
 in *non decimando*, yet court will
 presume against a lay impro-
 priator (no tithes having ever
 been paid) that they were
 granted against the tenant,
 and will also presume the grant,
 and look upon the land as tithe
 free. *Medly and Talmey, T.* 7
Wil. 3. 81
 Bill dismissed, no tithe having
 ever been paid, though not so
 alleged. *Thorngate and Wal-*
lop, T. 2 *Wil.* 3. 95
 General allegation of discharge
 sufficient. *Page's case, H.* 14
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Any thing of a titheable nature, may be given in discharge of tithes, as well as money; and the difference is, when it is in discharge of a *species* of tithes, and where of the land. Archbishop of *York*, and Duke of *Newcastle*, *M.* 3 *An.* 100

Discharges under stat. 31 *Hen.* 8. chap. 13. for the dissolution of monasteries, though in the hands of lay persons, are as much favoured in law, as if the same had remained, or as any now discharged in the hands of ecclesiastical persons. *Wilson and Burton*, *M.* 12 *Car.* 2. 28. *Page's case*, *H.* 14 & 15 *Car.* 2. 34. *Benning v. Dence*, *T.* 5 *Geo.* 1. 143

How an exemption from tithes ought to be laid. *Benning v. Dence*, *T.* 5 *Geo.* 1. 143

Must set forth in lands belonging to monastery, how the prescription is. *S. C.*

Land exempt, is so, in whatever house it comes. *S. C.*

How an exemption of land from tithes, as belonging to one of the greater monasteries, should be laid in the answer. *Hanking v. Gay*, *H.* 5 *Geo.* 1. 145.

Constant nonpayment evidence of redemption in the case of a lay impropiator. *Clark v. Dabwood*, *T.* 7 *Geo.* 1. 151

A general exemption bad. *Hicks v. Golding*, *H.* 7 *Geo.* 1. 154

Lands being parcel of a monastery of the *Cistercian* order, exempted or discharged from

tithes. *Lord v. Turk*, *M.* 9 *Geo.* 1. 178

Of exemption from tithes, as being parcel of the possessions of the priors of Saint *Juba* of *Jerusalem*. *Hanson v. Fielding*, *E.* 13 *Geo.* 1. 231

Lands exempted from tithes, as being part of the demesnes of an ancient monastery, being inclosed by act of parliament, shall not be made liable to tithes by any general words in the act. *Pratt v. Hopkins*, *M.* 2 *Geo.* 2. 274

Where a general exemption is insisted on, a partial one cannot be admitted in proof. *Leigh v. Mandley*, *H.* 4 *Geo.* 2. 322

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- This pamphlet and its author
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- "Great Cause of Tithe Milk."*
- This pamphlet inserted, in doc-
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- Wood; herb growing with other
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- Tithe of beans and peas gathered
 by the hand, and sold for man's
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 " Laws."
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 again without having made an
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If herb be growing with other grass, and made into hay it will be a great tithe. *Wallis and Pain*, *H. 12 Geo. 2.* 361

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Herbage.

Tithes payable for herbage eaten by traveller's horses. *Guilbert and Everley*, *T. 7 Car. 2.* 21

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He that would, &c.

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Hicks, Doctor George.

Some account of his stupendous work the "*Theaurus*" *Auth.* xxxiii. n.

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Hinckley in Leicestershire.

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Hobart, Sir Henry.

His judicial preferments enumerated Auth. xxi. n.

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Lord chief justice *Hobart* seems to be mistaken in ascribing parishes to the time of the council of *Lateran* Intro. xxxv. n.

Hoe Monday.

The Monday fortnight after *Easter* day, is *Hoe Monday*.

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His graphical works censured, as obscene and blasphemous Intro. cxxxix, cxi, cxli
Represents the parson in the character of a drunkard in "Midnight Conversation," of a debauchee in the "Harlots Progress," and of a glutton in "The Election" Intro. cxl

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Holbeach in Lincolnshire.

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Narseries.

Holt, Sir John.

Chief Justice *Holt* of opinion, that tithes must take the denomination of small or great, from the

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the quantity of the crop growing *Wallis v. Pain, H. 12 Geo. 2.* 359

Though Lord Chief Justice *Holt* held, that it should be determined, whether tithes be great or small, from their quantity, yet the judgment of the court of *King's Bench* was contrary. *Smith v. Wyatt, T. 15 Geo. 2.* 395

Holt yielded to this judgment so far, that he absented himself when it was given, which he would scarce have done, if he had been fixed in the contrary opinion. *Wallis v. Pain, H. 12 Geo. 2.* 359, 360

Lord Chief Justice *Holt* always regarded the principal or original intention of endowments, they being the sole ground of a vicar's title to tithes, and from thence formed the reason of his judgment, and not from the shape of the land, or the colour of what it produced; he knew it was originally intended by the grant, that the vicar was to have small tithes only *Introd. xxviii*

His character as a lawyer *Introd. xxviii. n.*

He observed, that the practice of the spiritual court made stones, gravel, and all things titheable *Introd. vi. n.*

See *Recorders of London*

Holt and *Ward*

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Holy Land

See *Limitations*

Honey

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Honourable

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Hop Poles.

Where parson or vicar hath tithe hops, if wood be cut to make hop poles, and employed in hop yard, no tithes shall be paid for the poles, nor shall he have tithes of the bark of the poles. *Anon. M. 9 Wil. 3. 85. Bate and Spracking, H. 4 Geo. 1.* 139

Hops.

Tithes of hops sometimes taken by impropriator, sometimes by vicar *Introd. xxiv.*

Hops to be tithed by the measure, not pole *Introd. xxv.*

Vicar not intitled to tithe of hops by prescription *Introd. xxvi.*

Whether hops great or small tithes, a question much litigated *Introd. xxvi.*

Judges have differed in their opinion *Introd. xxvi.*

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Prescription to pay so much in lieu of all small tithes, may include hops *Introd. xxvi. n.*

Court will take notice that hops have not been ancient *Introd. xxvi. n.*

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Vicar being endowed of small tithes, is thereby entitled to the tithe of hops, though of growth since endowment. *Franklyn and Saint Croft, T. 8 Geo. 1.* 158

Tithes shall be paid for fuel spent in fire to dry hops. Anon. *M. 9. W. 3.* 85

Setting forth the tithe of hops by the tenth pole unpicked, illegal. *Bliss v. Chandler, M. 7 Geo. 1.* 152

Hops a small tithe. *Franklyn v. The Master and Brethren of St. Croft, T. 8 Geo. 1.* 158

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Modus too near the value of the land disallowed. *Benson v. Watkins*, H. 3 Geo. 1. 135

Difference between a *modus* and a composition. Id. ib. *Gifford v. Webb*, E. 9 Geo. 2. 347

What *modus* is too rank. *Smith v. Roeliff*, H. 4 Geo. 1. 140

Modus

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Modus of 17d. for every cow, having a calf, for the tithe of the milk and the calf. *Roe v. The bishop of Exeter*, H. 6 Geo. 1. 148

Modus of 11d. of every milch cow milked, without a calf, for the tithe of the milk. Id. ib.

Modus of 13d. of every heifer, the first year she has a calf, for the milk and calf Id. ib.

All the above *moduses* payable at *Michaelmas* Id. ib.

Modus of 8d. for every hoghead of cyder made of apples grown in the parish Id. ib.

Modus of 1d. for hoard apples Id. ib.

An hearth penny for fire wood spent on the farm Id. 149

A garden penny for fruit, herbs, roots, and other garden stuff Id. ib. see *Phillips v. Symes*, T. 11 Geo. 1. 207

A penny for a colt Id. ib.

All the above *moduses* payable at *Easter* Id. ib.

Although a *modus* be pleaded, yet quantities and values must be set forth. *Gumley v. Foutleroy*, E. 7 Geo. 1. 149

Impropriator must be made a party to a bill, brought against his lessee to establish a *modus*. *Glanvil v. Trelawny*, H. 7 Geo. 1. 154

Distributive *moduses* are not good. *Turton v. Clayton*, T. 8 Geo. 1. 157

Twelvepence for a milch cow, adjudged void, being too rank, but 6d. for every calf killed and sold, held good. *Franklin v. The master and bretheren of Saint Cross*, T. 8 Geo. 1. 157

Quere, Whether a *modus* may be tendered. *Barnes v. Treppas*, M. 9 Geo. 1. 172

Modus for marsh land, upland hay, and all small tithes. *Bate v. Hodges*, H. 9 Geo. 1. 179. M. 11 Geo. 1. 216, 272

What *modus* too rank for hay Id. ib.

Modus of peat and turf, in lieu of tithe hemp, flax, and hay, void for uncertainty, and for that no right of turbary alledged. *Tully v. Kilner*, H. 9 Geo. 1. 179

Modus of 4s. at *Easter*, payable in lieu of tithe hay of a farm, disallowed as fraudulent, and uncertain. *Burwell and Coates*, E. 9 Geo. 1. 188

Modus of 1d. for hay, and 1l. 6s. 8d. for hay and small tithes, allowed. *Finch v. Masters*, E. 11 Geo. 1. 205

Modus for furze, coppice, and underwood, decreed. *Phillips v. Symes*, T. 11 Geo. 1. 207

Eightpence for a cow, and 4d. for an heifer, adjudged good. Id. ib.

Injunction to spiritual court to stay a libel for tithes in kind, where a *modus* of 4d. a score for all sheep, in lieu of tithe of lamb

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- lamb and wool, is prayed to be established. *Sir Edward Blacket v. Finney*, T. 11 Geo. 1. 212.
- Salmon v. Rake*, T. 6 & 7 Geo. 2. 338
- Modus* to pay a sum of money, but if in another person's hands, money or tithe in kind, ill. *Webber v. Taylor*, M. 11 Geo. 1. 215
- Modus* not to be established without a trial, if desired. Id. 216
- Unless parson has no proof. *Brinklow and Edmonds*, M. 5 Geo. 2. 333
- Modus* of 3 s. 4 d. payable at Easter, or otherwise when the sheep shall be sold, is void for uncertainty. *Philips v. Simes* H. 11 Geo. 1. 217
- A *modus* for tithe of corn void in the opinion of Sir Joseph Jekyll, master of the rolls, for uncertainty. *Carleton v. Brightwell*, T. 2 & 3 Geo. 2. 249
- Modus* of nine cart loads of logwood, an hoghead of cyder; and 2 d. an acre, all held good. *Woolferston v. Mainwaring*, H. 3 Geo. 2. 255
- The court will not consider, whether a *modus* is good in law, or not, till the *modus* is either admitted or proved. *Chapman v. The bishop of Lincoln*, H. 3 Geo. 2. 259
- Modus* ought not to be subject to fraud. Id. ib.
- To repair the church is a good *modus*. Id. 262
- Modus* to pay 2 s. in the 1 l. of the improved rent is nought. Id. 263
- Modus* to repair the chancel is good. Id. 270
- Modus* of 2 d. an hoghead for cyder, is good. Id. ib.
- Modus* to pay 4 s. for every day's ploughing, is not good; but to pay so much for every day's work, with an averment of what is contained, and that it was certainly known, is good. *Chapman and the bishop of Lincoln*, H. 3 Geo. 2. 270. *Manfau and Chapman*, S. C. and S. T. 1104.
- Modus* to pay 1 s. or thereabouts is not good, for the uncertainty. *Chapman and the bishop of Lincoln*, H. 3. Geo. 2. 271
- Modus* that in consideration parishioners made tithe grass into hay, parishioners inhabitants were to pay no tithe for the herbage of dry and unprofitable cattle, though they proved, parishioners time out of mind, had paid no tithe of this herbage, yet court held, that foreigners living out of the parish, made the tithe grass into hay, and yet paid tithe herbage, to be a material objection to the *modus*. *Fox v. Ayde*, E. 3 Geo. 2. 282. E. 2 Geo. 2. 1102
- Court held it to be a void *modus*, that making tithe grass into hay, should not only excuse that ground from paying tithes for

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- for herbage, but that perhaps a small quantity of meadow ground, by making the grass thereof into hay, should excuse the greater part of the ground of that parish from paying tithe herbage. *Id.* 283
- Modus* in relation to the tithes due to the parson, may be a good bar to the payment of the small tithe due to the vicar, because all the tithes did not at first belong to the parson, during which time he might agree to the *modus*. *Id.* 284
- Modus* of 4l. 10s. for a farm of 30l. is too rank. *Kennedy v. Goodwin, E. 5 Geo. 2.* 327
- Modus* of 3d. for every lamb, payable on Saint Mark's day, or so soon after as demanded, is not void in law, but the validity of it shall be determined by a jury. *Webb v. Gifford, T. 4 & 5 Geo. 2.* 328
- Every *modus* presupposes a real composition, though the original instrument is not extant. *Chapman and the bishop of Lincoln. H. 3 Geo. 2.* 273.
- Chaplin and Bree, H. 15 Geo. 3.* 646. *see* *Introductio*. 1.
- There is no necessity, either in law, or at equity, to use the word *modus* in a plea; it being a term not necessary in pleading. *S. C.* 647. *Richards and Evans, M. 21 Geo. 2.* 429
- Modus* is a manner of paying tithes in kind. *Travis and Whitbread, T. 17 Geo. 3.* 802
- Modus* must not be defultory. *Webber and Taylor, M. 11 Geo. 1.* 216
- Modus* of 6s. 8d. for one calf in ten, and not said "and so in proportion" if there be a less number, is bad. *Id.* 339
- Issue directed to try a *modus*, though not proved exactly as laid in the bill. *Laithe v. Christian, M. 8 Geo. 2.* 345
- Bill to establish a *modus* when proper. *Rudge v. Chapman, M. 13 Geo. 2.* 391
- Modus* being as much as the manor itself in queen Elizabeth's time too rank, and consequently cannot be time out of mind. *Ekin and Pigot, H. 18 Geo. 2.* 404
- Modus* for a half-penny for each calf established. *Brinklow v. Edmonds, M. 5 Geo. 2.* 331
- Modus* of a smock penny for firewood, good. *Id.* *ib.*
- Modus* of an halfpenny for the wool of each sheep dying, established. *Id.* *ib.*
- Modus* of 4d. a month for the tithe of wool of sheep shorn in the parish, established. *Id.* 332
- Where the day of payment of a *modus* is omitted in an answer, it may be supplied by evidence, but not if omitted in a bill to establish a *modus*. *Gibb v. Good-*

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- Goodman*, T. 6 & 7 Geo. 2. 338
- There must be some ground of law whereon to support payments in lieu of tithes. *Ekin v. Pigot*, H. 18 Geo. 2. 404
- Chancery*, according to the rule of the *Exchequer*, defendant admitting tithes had not been paid time immemorably, directs an issue to try *modus*. *Hardcastle v. Smithson*, T. 18 Geo. 2. 405
- Though a *modus* is laid in all the occupiers, yet suing a part of them is sufficient. *Hardcastle v. Smithson*, T. 18 Geo. 2. 408
- It is not necessary that lands excepted out of a *modus*, should have the same description, as when the *modus* was first settled. *Hardcastle v. Smithson*, T. 18 Geo. 2. 410
- Setting up a *modus*, does not preclude defendants, from objecting to plaintiff's title for tithes. *Carr v. Ball*, E. 20 Geo. 2. 419
- House of Lords reversed a decree of the court of *Exchequer*, for being too hasty in rejecting a *modus* as too rank. *Ekins v. Dormer*, T. 20 & 21 Geo. 2. 427
- Modus* may be overturned for rankness, if for a specific thing, otherwise, will be sent to trial. Id. ib.
- Common inclosed by agreement covered by former *modus*. *Stockwell v. Terry*, T. 22 & 23 Geo. 2. 448
- Modus* of 9 d. an acre for marsh land, except when sown with corn or planted with hops, not determinable without trial. *Chapman v. Smith*, T. 27 & 28 Geo. 2. 469
- Modus* to bind occupiers must be established on proof, and on the mere right Id. 482
- Modus* too rank, too high, or near the value of the tithes, not allowed; but a difference where for land or a particular produce Id. 483
- Nine *modus*es over-ruled in the *Exchequer*, without directing an issue to try their existence. *Torrano v. Legge*, T. 3 Geo. 3. 519
- Modus* of 5 s. an acre for all land sown with wheat, in lieu of all tithes of wheat, too rank. Id. ib.
- So is a *modus* of 2 s. 6 d. an acre for all land sown with other grain, in lieu for all tithes of such grain Id. 520
- So a *modus* of 2 s. an acre for all meadow mowed, and 1 s. 4 d. for upland grass ground mowed, in lieu of all tithes of grass and pasture Id. ib.
- So a *modus* of 2 s. 6 d. for every farrow of pigs littered, in lieu of all tithes of them Id. ib.
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Modus that parson should have all
tithe of hay of two acres in a
piece of ground of 20 acres, in
lieu of tithe hay therein, over-
ruled, answer and proof vary-
ing, and as being uncertain
Id. 520.

Valuing a lamb at 4s. too rank a
modus Id. 521

Modus of 9d. for every cow de-
pastured on meadows, and 6d.
for every one on uplands, in
lieu of tithes of cows, calves,
and milk, over-ruled, as rather
too rank, but principally, as
being uncertain Id. ib.

Modus of 1d. a fleece of all wool
shorn in parish, in lieu of all
tithe wool, over-ruled, as too
rank, and as setting up a *modus*
non decimandi Id. ib.

So a *modus* of 4d. upon every
orchard, in lieu of tithe of all
fruit-trees within the parish
Id. 522

Though tithes in kind are the
parson's right, yet immemorial
customary payments ought to
have weight. *Hardcastle* and
Smithson, T. 18 Geo. 2. 406

Unless there are very strong rea-
sons to overturn customary pay-
ments, court will not be easily
brought, *quiescit morere*. S. C.

Modus established, though no day
of payment, nor to whom pay-
able. *Woolferston* and *Mainwaring*,
H. 3 Geo. 2. 255. but
quære, Introd. xlix. and see
Garte and *Ball*, E. 20 Geo. 2.

417. *Evans* and *Richards*, M.
21 Geo. 2. 429, 430

Customary immemorial payments
will not be easily overturned.

Chapman and *Smith*, T. 27 &
28 Geo. 2. 477, 478.

Modus void, where no time at-
tended for the payment of it.

Bennet and *Treppass*, H. 9 Geo.
1. 183

Modus is nothing more than an
ancient composition between a
lord of a manor, and the own-
ers of the land in a parish, and
rector, which gains strength by
time. *Ekins* and *Dormer*, T. 20
& 21 Geo. 2. 428. see Introd.
xlii. *Chapman* and the Bishop
of *Lincoln*, H. 3 Geo. 2. 270,
272. *Moufson* and *Chapman*, S. C.

S. T. 1106, 1119

Modus of one tithe in lieu of an-
other, is bad, being part for
the whole. *Torriano* and *Logge*,
T. 3 Geo. 3. 522

Modus that every occupier of land
within a parish, living out of
the parish, shall pay four-pence
an acre for all pasture land
within the parish; but if he
lives within the parish, to pay
tithes in kind, a good *modus*.
Chapman and *Moufson*, H. 3 Geo.
2. 1107. And ought to be
established in equity. S. C.
1120. See *Chapman* and the
Bishop of *Lincoln*. S. T. 269,
273

Modus to pay a penny a year for
every acre, or thereabouts,
void.

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- void. *Chapman and Monson*,
S. T. 1113
- Modus* to pay twelvepence an acre
for every acre of upland, and
sixpence for every acre of marsh-
land, good. S. C. S. T. 1114
- Modus* need not be the same every
year, as while the religious
houses held the lands in their
own hands. S. C. 1114
- Not necessary to shew a *modus* had
a reasonable commencement.
Chapman and Bishop of Lincoln,
1115. H. 3 Geo. 2. 270
- Sufficient that parson, patron, and
ordinary, might at first make
the agreement, and bind the
succeeding parsons, though the
instrument of agreement is lost,
yet the *modus* will be good.
S. C. 1115
- What shall be said to be a good
modus. *Monson's case*, H. 3
Geo. 2. 1117
- Modus* that depends on the will of
the occupier, not good. S. C.
1119
- Same land may at one time pay
tithes in kind, and at another
time a *modus*. S. C. 1120
- Same land is not to pay tithe in
kind, and a *modus* too. S. C.
1120
- What is a leaping or dancing *mo-
dus*. *Chapman and the Bishop
of Lincoln*, T. 3 Geo. 2. 1121
- Several *modus*es set aside, because
no time ascertained for the pay-
ment of them. *Goddard and
Keeble*, E. 3 Geo. 1. 163. *Wood-
ford and Cross*, T. 3 Geo. 1.
1097. *Pawice and Dugard*,
S. T. 1098. *Pemberton and
Sparrow*, S. T. 166, 1098. *St.
Eley and Prior*, H. 9 Geo. 1.
193. *Corpus Christi College
and Vincent*, T. 9 Geo. 1. 1099
- Modus* set aside as unreasonable.
Mason and Holton, T. 9 Geo. 1.
1099
- Modus* payable at or about such a
day, not good; for the day
must be ascertained. *Blackett
and Finney*, T. 11 Geo. 1. 221,
1100
- Since held sufficient, if it be al-
leged by whom the *modus* is
to be paid. *Carte and Ball*, E.
20 Geo. 2. 417. *Evans and
Richards*, M. 21 Geo. 2. 429,
430. *See* Introd. xlix.
- Of prescribing in *modo decimandi*,
Fleming and the tenants of *Dud-
ley*, E. 23 Eliz. 5
- Tilt penny *modus* being uncertain,
and liable to be totally annihi-
lated, impossible to be support-
ed as a legal payment. *Travis
and Whitehead*, M. 16 Geo. 3.
775. *See* S. C. 882
- Modus*es set aside as too big. *Benfon
and Watkins*, H. 3 Geo. 1.
1093. *Franklin and Jenkins*,
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- Modus* set aside, because the small
tithes in kind did not amount
to more, than the *modus*es them-
selves. *Lloyd and Small*, H. 4
Geo. 1. 1093
- Modus*

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Modus shall continue, though the
composition be of forty years
standing. Anon. *H. 6 Geo. 1.*

1096

No length of time can give sanc-
tion to a bad *modus*. *Chapman*
and *Manfow*, *H. 3 Geo. 2.* 1113.
Whitehead and *Trawis*, *H. 19*
Geo. 3. 881

Court of equity over-rule a *mo-*
*du*s, because it would be op-
pressive to send it to be tried by
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wards, dissolved by stat. 31 *Hen.*
8. cap. 13. and by that means
capable of being discharged of
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By the suppression of them, the
King obtained a revenue of
above 100,000*l.* a year, besides
a large sum of money, plate,
and jewels App. 1236

The religious of these houses had
almost all of them something
to subsist on App. 1236. See
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Money.

Before the *American* wealth began to be imported into Europe, money was of twenty times the value it is at present Introd. xlv. n.

The nominal value of money has been trebled Introd. xlv. n.

The arbitrary raising the nominal value of money, deprives all persons intitled, either to annual or other periodical rents, fees or revenues, and also to whom gross sums of money were due, of so much of their respective incomes, as the deficiency between the old and new nominal value amounts to Introd. xlv. n.

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Mortgages.

Lord Chancellor *Hardwicke* said, it was the constant practice of the court of *Chancery*, in decrees against mortgagees, upon bills for redemption, or against executors to account, to direct the account without future words; and yet if the person decreed to account, receive any monies *subsequent* to the decree, it is enquirable before the master equally with sums received before the decree. *Bell v. Read*, M. 21 Geo. 2. 434

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THE new *natura brevium*,
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time of Sir *Heneage Finch*, chan-
cellor, published by this lawyer
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Drift or driving nets described.
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ster*, set up as a decree of the
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venues of the church, which
had been alienated, should be
restored; that tithes were com-
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William Hogarth, quoted In-
trod. cxli.

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Though this book was wrote and
edited by a judge, there seems
a mistake in it, worthy the no-
tice of the student, and young
practiser, pointed out by the
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Notice given at any time before

the end of the year, for which the composition was made, is notice fully sufficient in law.

Hewitt and *Adams*, E. 22 Geo.

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Plants, shrubs, trees, fruits, and roots, planted and raised in nurseries, and sold out again, without having made an increase, are titheable in kind. *Hewitt and Adams*, *E.* 22 *Geo.*

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Tithes shall not be paid for cattle
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This lord chief baron cites the reports of Sir *James Burrow*, with great encomiums in the House of Lords Auth. viii. n.

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Lord Chief Baron *Parker*, eminent for greatness of mind and goodness of heart. *Erskin and Ruffle, M. 9 Geo. 3.* 568

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Parning, Robert.

Robert Parning, Lord Chancellor to *Edward III.* delivered, with his own hands, a record into the court of *King's Bench*,
Intro. lxvii. n.

This Chancellor died 17 *Edw. III.* sitting and arguing in the court of *Common Pleas*, as is recorded in the year-book of that year
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Description of him Intro. xxxviii. n.

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One parson may prescribe to have tithes, within the parish of another Intro. xxxvii. n.

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One parson is not to pay tithes to another Intro. lv.

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Not impropiator, but parson only seems intitled to *Easter* offerings.

Lawrence v. Jones, T. 11 Geo. 1.

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This appellation most honourable in the opinion of Sir *William Blackstone's* Biographer
571. n.

Parson may sue in a court of equity for his tithes, be the amount of his demand ever so small. *Lewis and Griffith, M.*
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Parson, baronet, doctor of divinity, rector of a parish, and bishop. See "*Form of a lease of tithes*" in the Appendix of Precedents

The parson's right originally settled on the immutable law of nature. *Cullymore and Bosworth, H.* 19 Geo. 3. 941

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Parties

Where impropiator's right does not come in question, he need not be made party to a bill for subtraction of tithes. *Carte v. Ball, E.* 20 Geo. 2. 421

Bill for tithes by bishop, and sequestrator, during incapacity of incumbent, dismissed, for want of making the incumbent or his committee a party. *Bishop of London and Beaumont, M.* 10 Geo. 1. 198

In a bill for portion of tithes in a neighbouring parish, vicar of that parish must be a party. *Bailey and Worrall, T.* 9 Geo. 1. 167

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They are not titheable. *Carleton and Brightwell*, T. 2 & 3 Geo. 2. 249

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Pope Pascal the *Second* exempted generally all the religious from paying tithes of lands in their own hands *Intro.* lviii

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Patron, in order to qualify him to bind the rights of the church, must be absolutely seised in fee-simple, a fee-simple conditional will not do. *Attorney General and Cholmeley*, T. 5 Geo.

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Parson's bill dismissed, but without costs, he being a *pauper*. *Turner and Smith*, T. 12 Ann. 125. S. C. E. 2 Geo. 1. 127

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Inadequate payments in lieu of tithes in kind, though certain and uniform, and long acquiesced under, and though considered as sanctified by parliament, and purchases made, and marriage-settlement entered into, in consequence thereof, yet they are not binding *Intro.* cxx, cxxi, cxxii

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Two instances, wherein the parson succeeded against peers of the realm, whose proceedings against the sons of the church, seemed to be tinged with rather severity. Doctor *Bosworth* and *Limbrick*, M. 18 Geo. 3. '831, 843, 844. Introd. cxxvi, cxxviii. *Devie* and Lord *Brownlow*, M. 19 Geo. 3. 847 T. 22 Geo. 3. 1011. Introd. cxxviii

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Thomas Pember a confrere of the Catholic religion, allowed a pension for life, upon the dissolution of monasteries App. 1231

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The pensions assigned to the religious of the houses on the dissolution of monasteries, for life, were to continue until they should be preferred to some dignity, or cure of greater value, than these pensions App. 1236

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Plea of non-residence to a bill for tithes, by lessee of rectory, allowed. *M. 11. v. Etheridge, H. 11 Geo. 1. 218. Quiber v. Musfending, E. 12 Geo. 1. 225*
 Plea of a decree in Chancery, and a verdict at law, to establish *modus* to a bill for tithes, allowed. *Geale v. Wyntour, H. 11 Geo. 1. 219. Quilter v. Lowndes, T. 13 Geo. 1. 236. Bokenham v. Bentfield, M. 13 Geo. 1. 237*

Plea to a bill for tithes, that rector was absent fourscore days, over-ruled. *Atkinson v. Peasley, M. 13 Geo. 1. 238*

If defendant pleads any thing in bar, which by presumption admits the demand, and the plea is held to be bad, yet a court of law will still see whether plaintiff has made a case that intitles him to recover. *Carte v. Ball, E. 20 Geo. 2. 419*

To a second bill for the same tithes, defendant pleads the first, and the decree. Mr. Baron Clerk allowed the plea. *Bell v. Read, M. 21 Geo. 2. 431*

Defendant pleaded to a bill for a *modus*, that he had obtained a verdict and judgment in an action of debt upon stat. 2 & 3 Ed. 6. against defendant, for not setting out tithes in kind, and the plea was allowed to be good. *Black and Elliot, M. 25 Car. 2. 45*

Whether alienage a good plea to a bill for tithes. *Pettitt and Cburley, T. 3 W. 1. and Mary, 72*

In courts of equity, the same formality is not required, as in pleadings at law. Corporation of *Bury & another, and Evans, E. 12 Geo. 2. 383*
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A poem is a speaking picture.
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Poets let out their talents, in order to vilify the clergy, respecting their tithes Intro. cxxxviii, cxxxix
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Poole, Henry.

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This poet among those, who satirized the clergy, on account of their tithes Intro. cxxxix

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The Pope, before the reformation, exercised a jurisdiction, either by way of avocation, or by request, from an inferior court. *Colegrave v. Jaseu, M.* 17 Geo. 2. 402

The legate *a latere* exercised an authority here, without an appeal to the Pope Id. ib.

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Portion of Tithes.

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In a bill for a portion of tithes, in a neighbouring parish, the vicar of that parish must be a party. *Bailey and Worrall, T.* 9 Geo. 1. 167

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Portion of tithes are distinct from the tithes of the rectory. *Downes* and *Mooreman*, H. 11 Geo. 1.

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If patentee claims tithes of a manor, &c. formerly held, as of a portion of tithes, it is sufficient to support his claim. *Mooreman* and *Downes*, H. 11 Geo. 1.

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Tenth part of potatoes should be separated from the nine parts, upon the spot where they arise, and before they are removed.

Bosworth and *Limbrick*, M. 18 Geo. 3. 845

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This Lord Chief Justice of the court of *King's-Bench*, in the reign of *King George the First*, was father to the present Lord *Camden*, President of the council Introd. cii. a.

Precedent.

Decree read by way of precedent only. *Austen* and *Nicholas*, H. 4 Geo. 1. 137, 138

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Original instrument of endowment of *Kestham* in *Essex*. *Sims v. Bennet*, M. 1 Geo. 3. 502
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 Terriers. Attorney General and *Chalmers*, T. 5 Geo. 3. 550,
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Wilkinson and *Allott*, E. 17 Geo. 3. 794
 Original endowment of *Whaplode* in *Leicestershire*. *Bateman* and *Aistrup*, E. 14 Geo. 3. 693
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 Original agreement for *modus* in *Stapenhill* in *Derbyshire*. *Lloyd* and *Mortimer*, M. 16 Geo. 3. 747
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 Original endowment of *Stangroend* in *Lincolnshire*. Lord *Brownlow* and *Devie*, T. 22 Geo. 3. 1018
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Cases of discharge by prescription considered. Corporation of *Bury* & another, and *Evans*, *B.* 12 *Geo.* 2. 378

Prescription in *non decimando* never allowed. *S. C.* 381. *Munson's* case, 3 *Geo.* 2. 1119

Non-payment of tithes may be evidence of a prescription. *S. C.* 383

Prescription infers an original endowment. *Travis* and *Whitehead*, *M.* 16 *Geo.* 3. 766

Prescription to pay less than a tenth, is a void prescription. Doctor *Bosworth* and *Limbrick*, *M.* 18 *Geo.* 3. 841. *Cullimore* and *Bosworth*, *H.* 19 *Geo.* 3. 934

Prescription to pay the tenth part of corn in the sheaf, for the tithe of all which is in the sheaf, and of which is raked, is not good. *Chapman* v. the Bishop of *Lincoln*, *H.* 3 *Geo.* 2. 263

A foreigner may prescribe to pay two pence, for every acre of pasture he occupies. *Id.* 266

There can be no prescription in *non decimando*, against a lay rector, any more than against a spiritual rector; but there may against one, who only in titles himself to tithes *Lady*

Charlton v. Sir *Blunden Charlton*, *H.* 6 *Geo.* 2. 337. *Aldermen* and *Burgesses* of *Bury Saint Edmonds* v. *Evans*, *E.* 12 *Geo.* 2. 370, 386. *Rotheram* v. *Fenshaw*, *H.* 22 *Geo.* 2. 438.

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Parson in lieu of certain right at common law, must have a right equally certain by prescription. *Torriano* v. *Legge*, *T.* 5 *Geo.* 3. 521

Prescription for tithes. *Beake* v. *Mayne*, *M.* 25 *Elix.* 7

Prescriptions had their beginning before the time of *Richard* the First. *Pole* and *Gardiner*, *H.* 6 *Anne* 1090

Parson may prescribe to have tithes within the parish of another. *Intro.* xxxvii. n.

Prescription by the *Cisterians* in *non decimando*. *Chapman* & others, and the Bishop of *Lincoln* & others, *H.* 3 *Geo.* 2. 266, 274

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No tithes are payable for quarries,
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land allowed a pension during
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John Rausen, one of the confreres
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Compiler of *Readings on stat.*
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The *Chronological Table* and
Index to the fourth edition of
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him *Auth.* xxxii. n.

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He superintended the octavo edition of *Stræ. Rep.* at the press

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Ancient dialogue concerning the EXCHESQUER translated by him

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He superintended *Bobun's* Law of tithes, at press

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- Rector, of common right, entitled to all tithes in kind. *Chapman v. Smith*, T. 27 & 28 Geo. 2. 478. *Whitehead and Travis*, H. 19 Geo. 3. 876. Lord *Brownlow and Devie*, T. 22 Geo. 3. 1016
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- But his tenant or lessee does Introd. lv
- It is incumbent on the defendant to prove an exemption or discharge, or a title to the tithes. *Whitehead and Travis*, H. 19 Geo. 3. 876
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- His claim to tithes arises *de communi jure*. *Attorney General and Cholmeley*, T. 5 Geo. 3. 546. *Devie and Lord Brownlow*, H. 19 Geo. 3. 876. *Cullimore and Bosworth*, S. T. 937
- An agreement of above one hundred years old, between rector and owners of land, for accepting a *modus* in lieu of tithes, though equal, is void, as against the successor in the rectory. S. C. 547. *Cholmeley and Attorney General*, M. 8 Geo. 3. 563, 564
- Rector will not be contented with only one fifteenth of the corn tithes, when he is intitled to one tenth. *Yateman and Cox*, H. 14 Geo. 3. 642
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Report of this cause, extracted from the records of the court of *Chancery*. *Whitehead* and *Travis, H. 19 Geo. 3.* 930

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- 9 *Edw.* 2. stat. 1. c. 1. cited
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- 1 *Edw.* 3. c. 10. cited App.
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- 1 *Rich.* 2. c. 13. cited Intro.
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12 *Rich.* 2. c. 15. cited Intro.
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- 2 *Hen.* 4. c. 4. cited Intro. lix.

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- 25 3 *Edw.* 6. c. 13. explain-
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- 26 *Hen.* 8. c. 3. Archbishop
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- 1 *Elin.* c. 19. cited App. 1276
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8 *An.* c. 35. cited App.
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6 *Geo.* 1. c. 21. cited App.
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25 *Geo.* 2. c. 36. cited In-
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27 *Geo.* 2. c. 20. cited In-
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30 *Geo.* 2. c. 19. cited App.
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The "Clergyman's law," or "Complete incumbent," published under the name of Doctor *Watson*, was compiled by Mr. *Place*, a Barrister of *Gray's Inn* Introd. xxii. n.
His opinion and reasons for distinguishing between great and small tithes, from their quality, not quantity Introd. xxii
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Welling in Kent.

For tithes in this place, see *Hodgson and Smith, T. 1 Geo. 1.*

Wem, Baron

See Chancellors

Jesuits.

West, Clement.

Clement West, a confrere of the Catholic religion, allowed a pension

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tion during his life, on the dissolution of the monasteries.
App. 1231.

West Dean in Sussex.

For tithes in this place, see *Jones*
and *Barret*, H. 11 Geo. 1. 204

Westbaughton in Lancaster.

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Westminster the First.

Chap. 39. cited Intro. l. n.

Westminster Hall

See *Dyer*, Sir *James*
Extraparochial
New Trial.

Weston, William.

William Weston, knight, prior of
the hospital of Saint *Jerusalem*,
allowed a pension, during his
life, on the dissolution of the
monasteries App. 1230

Whapload in Leicestershire.

For the tithes of this parish, see
Bateman and *Aistrup*, E. 14
Geo. 3. 658
See Precedents.

Wheat.

Wheat must be cut down before
tithe thereof can be set out.
Mather v. Holmwood, M. 5 Geo.
3. 522

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Modus

Setting out tithe.

Whipmead in Bedfordshire.

For tithes in this place, see *Bibbe*
and *Huxley*, H. 11 Geo. 1. 201

Whitehead and Travis

See Depositions

Tables

Whitlock, Sir Bulstrode

See Commissioners

Widdrington, Sir Thomas

See Chief Barons

Wilkinson and Allot

See Precedents.

Wickliff, John.

This the first divine in *Europe*, who
attempted a reformation of re-
ligion, was of opinion, that
tithes were merely alms, and by
no means of gospel institution
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Wight, Isle of.

For tithes in this island, see *Drunes*
and *Mooremian*, H. 11 Geo. 1.
202. *Baxter* and *Knollys*, F.
24 & 25 Geo. 2. 451

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See *Dodd*, Sir *Samuel*

Wildmore Fenn in Lincolnshire.

For tithes in this place, see *Anon.*
F. 26 Eliz. 8

Willes, Edward.

Mr. Justice *Willes* is said to have ad-
mitted a great deal of modern
evidence, not admissible; and
to have not only rejected admissi-
ble evidence, but refused many
questions

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questions of law to be debated ;
and the jury, under several ap-
parent misdirections of the said
judge, found their verdict. *De-*
vie and Lord *Brownlow*, M. 19
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Sealing a will is not considered
as signing in law, though so
laid down in *Black. Com.*

Auth. v. n.

Last wills and testaments affecting
real estates must be executed in
the presence of three witnesses
at least *App.* 1307. n.

Wilmot, Sir *John Eardley*.

This lord chief justice of the
Common Pleas, with the whole
court, approved the citing Lord
Chief Baron *Comyns's Digest*,
though not allowed by the
judges *Auth.* xii, xiii. n.

Wilson, *George*, Serjeant at law

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Wiltshire.

For tithes in this county

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Castle Eaton

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For tithes in this place, see *Chap-*
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See *House of Lords*.

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Witness objected to, because an
inhabitant of the parish, where
modus insisted on. *Watson* v.

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Brownlow (lord) and *Devie*,

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Travis and *Whitehead*, 765,

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See *Whitehead and Travis*, 887
Wills.

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**Whether wood be a great or small
tithe** Introd. xii

**Whether tithe payable of wood
only not fit for timber Introd.**

If there be no custom respecting
in what manner tithe of wood
is to be paid, how it is to be
paid Introd. xiv

As to the vendor and vendee of
wood paying the tithe thereof
on sale Introd. xiv

No tithe shall be paid for wood employed to hedge or fence corn, when parson hath tithe corn. *Anon. M. o Wil.* 3. 86

At common law wood was tithe-
able, though before severance
it was parcel of the freehold.
Doctor *Burgess's* case, 7. 4 Car.

Tithes for wood decreed. *Sbires*
and *Burgoine*, 12 Car. 1. 10

Wood may be exempt from tithe
by custom. *Dowdeswell* and
Harker. T. 11 Wil 3. 02

Whether tithe wood should be set
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Ash fallen of above 20 years growth,
and used for the plough and cart,
shall pay tithe. *Gas and Perch,*
E. 2 Ann. o8

Occupiers must always set forth
an exemption from tithe wood.
Jordan and Colley, E, 7 Geo. 1.

Not certainly determined, that
tithe wood is due of common
right. *Jordan and Colley, E. 7*
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Woodland grubbed up, is not exempted for seven years, as barren land within stat. 2 & 3 Edw. 6. c. 13. *Beardmore v. Gilbert*, H. 11 Geo. 1.

Tithe of wood is a predial not a mixed tithe. *Walton v. Lady Mary Tryon*, M. 25 Geo. 2. 458

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Great tithea

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Price, Mr. Baron

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Ward, Sir Edward

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Wool.

In what manner wool to be
tithed Introd. xvii

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Customary manner of payment
of tithe wool of the elder sheep,
by

by weighing the wool, and delivering the tenth part without fraud to the vicar, without his seeing or touching it, overruled. *Christian and Wrens, M. 6 Geo.*

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Tithe of the wool of sheep of a year old, payable as well as all other wool. S. C.

Tithe of wool of lambs due, though parson had received the tithe of the lambs in their wool.

Carthew v. Edwards, T. 22 & 23 Car. 2 450

The whole tithe of wool shall be paid to the rector or vicar of the parish in which the sheep are shorn. *Bateman and Aistrup, E. 14 Geo. 3.* 670. n.

The whole tithe of wool is by law payable when the sheep are shorn. Id. ib.

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Worcestershire.

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Affart means lands grubbed up, and made fit for tillage. *Evans v. Nouell, E. 9 Geo. 1.* 187

Construction of the words "*de assartatis et assartandis*" in a grant of Edward the First. *Bond v. Barrow, H. 5 Geo. 2.*

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Ecclesia defined. *Yateman and Cox, H. 14 Geo. 3.* 640

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Alaragium defined. *Bateman and Aistrup, E. 14 Geo. 3.* 695. n.

Canopi explained. S. C. 696. n.

Bladum defined. Lord Brownlow and Devie, *T. 22 Geo. 3.* 1017

1074

"*Except*" in some instances synonymous with the words "*not including*." *Chaplin and Bree, H. 15 Geo. 3.* 647

"*Weanable*" defined. *Callimore and Bosworth, H. 19 Geo. 3.*

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The word *interchangeably* in the conclusion of deeds, ought not to be inserted, if both parts of the deed are originals App. 1305. n.

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What custom of tithing corn this chief justice said was against common reason. *Chapman & others and The bishop of Lincoln, H. 3 Geo. 2. 263, 1111*

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Wright and Elderton

See Dodd, Sir Samuel.

Writing.

Though complaint for Quakers tithes under statute 7 & 8 *WH. 3. c. 34. f. 4.* is not required to be in writing, yet it will be more conformable to usual practice, if same be so *Introd. xcviij. n.*

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THERE were three different denominations of the year

1732, to three state papers, ~~all~~ published in one, and the same week *Pref. xviii*

Year shall not refer to the *era*, but must be intended a solar year of 365 days. *Quilter and Mussendine, E. 12 Geo. 1. 228*
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9 *Hen. IV. App. 1141*

12 *Hen. IV. App. 1222. n.*

2 *Hen. V. App. 1140*

21 *Hen. VI. App. 1179. n.*

28 *Hen. VI. App. 1140*

32 *Hen. VI. App. 114b*

34 *Hen. VI. App. 1179. n.*

11 *Hen. VIII. App. 1141*

27 *Hen. VIII. App. 1185. n.*

50 *Edw. III. App. 1141*

8 *Edw. IV. App. 1140, 125a marg.*

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Yorks, Sir Philip

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Driffeld Abby
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**** As the references to the under heads, from the articles of the Index are, in general, rather numerous; the reader may perhaps wonder, that there should not be so much as even a single reference from TITHES to any of those heads, especially as they are the subject matter of the whole work; and he may not perhaps be the less surprized, upon being informed, that TITHES making so very considerable a part of the work, and consequently of the Index, that that circumstance solely occasions the omission in question, since the compiler was, for that very reason, totally at a loss to what under heads he should refer TITHES, as none of them in particular could claim any preference, from their being more necessary to be known, or more important, than any other; these considerations therefore induced the compiler not to refer TITHES to any particular under heads; but, instead thereof, he refers the reader, for TITHES, generally to every part of the work, and to every article of the Index; and he presumes to submit the above reasons, in apology, for his so doing.*









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